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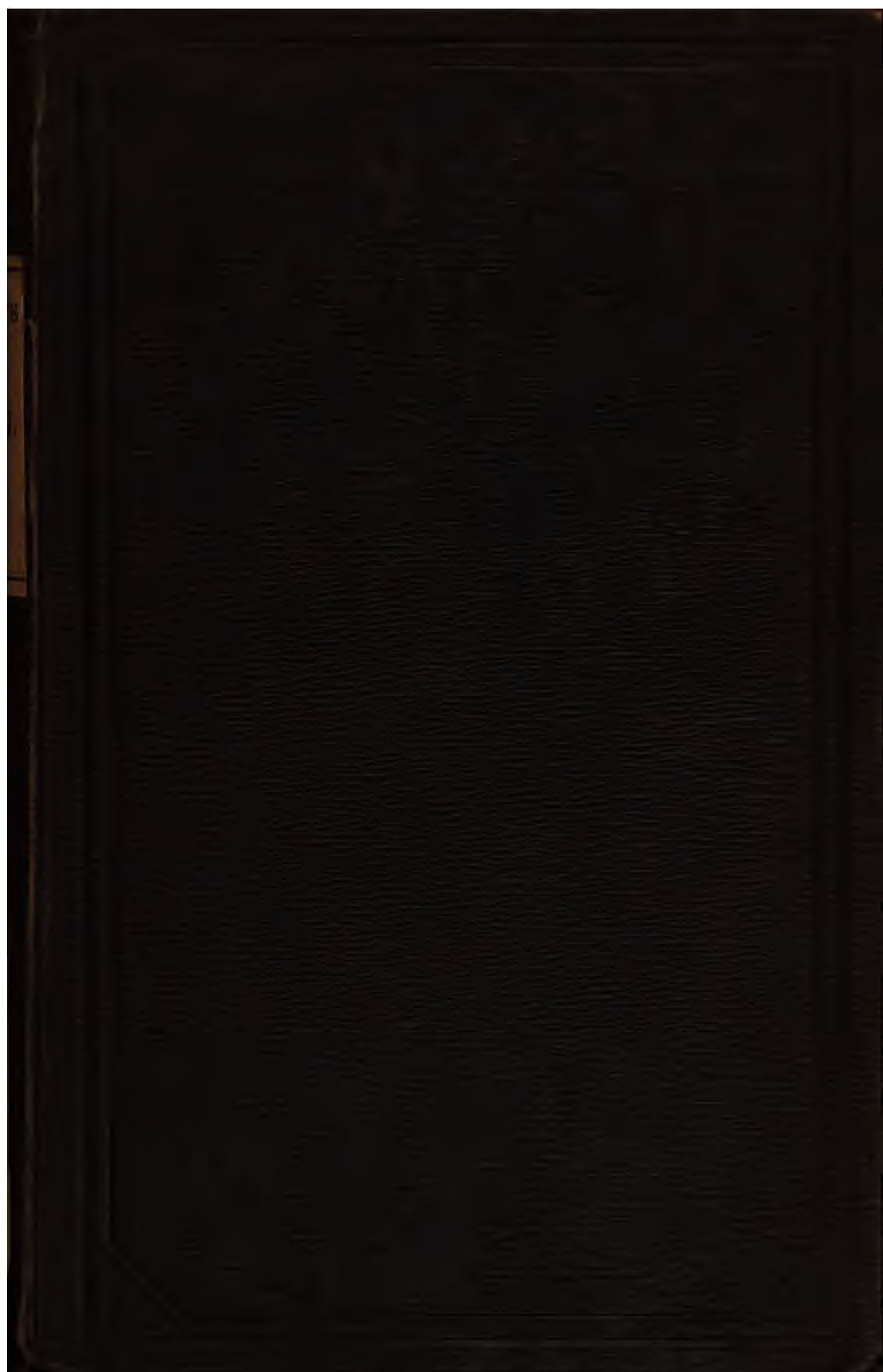
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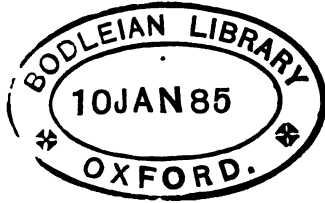
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PREFACE

TO THE SECOND EDITION.

A SHORT and general introduction to the Criminal Law in narrative form has been added to this Edition, as it was felt that a better explanation might be thus made of some difficult points than by questions and answers; the remainder of the book, however, retains its original form.

The Statutes passed and important cases decided bearing on the Criminal Law since the last Edition have been noted in the text, and references to authorities are to the latest editions.

I desire to express my thanks to H. S. HOLT, Esq., B.A., of Keble College, Oxford, for assistance kindly rendered in preparation of this Edition.

J. CARTER HARRISON.

57, CHANCERY LANE, W.C.,
December, 1884.

PREFACE

TO THE FIRST EDITION.



THE following pages have been compiled in the hope of supplying a want which exists amongst Students preparing for the Voluntary Honors Examination prior to admission as Solicitors—namely, a short guide to Criminal Law. The subject is a large one, and it is, therefore, impossible to provide in so small a space for every question that may be put; but it is hoped that this book will give a general knowledge of the subjects of which it treats. References to authorities are given to enable further information to be acquired where necessary.

J. CARTER HARRISON.

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CRIMINAL LAW.

INTRODUCTION.

§ 1. *Place of Criminal Law in Jurisprudence.*

THE immediate object of law in the abstract is the creation and protection of rights (*a*), which rights ^{Division of rights.} subsist either—

- (1) Between subject and subject; or,
- (2) Between state and subject; or,
- (3) Between state and state.

Hence arises a threefold division of law (*b*) into— ^{Division of law.}

- (1) *Private law*, dealing with the rights subsisting between subject and subject;
- (2) *Public law*, dealing with the rights subsisting between state and subject; and
- (3) *International law*, dealing with the rights subsisting between state and state.

Private law is either (*c*)—

- (1) *Substantive*, defining the rights of individuals; or,
- (2) *Adjective*, indicating the procedure by which they are to be enforced.

Private law.

(*a*) Holland's *Jurisprudence*, p. 54.

(*b*) *Ibid.* p. 78.

(*c*) *Ibid.* pp. 107, 108.

Moreover, substantive private law deals with rights which may be either—

- (a) *Normal*, or
- (b) *Abnormal*,

according as the persons with whom they are connected are of the ordinary type or deviate from it, as in the cases of lunacy, infancy, &c.

Whether normal or abnormal, rights are also—

- (A) *Antecedent*, as existing irrespectively of any wrong having been committed; or
- (B) *Remedial*, as springing up when an antecedent right has been violated.

Antecedent rights are either *in rem*, *i. e.*, available against the whole world, or *in personam*, *i. e.*, available only against a definite individual.

Remedial rights are almost all available only *in personam*. This division of private law may be more shortly expressed as follows:—

Private law is either	Substantive, defining rights which are	{ normal abnormal	{ antecedent remedial—in <i>personam</i> .	{ <i>in rem</i> . <i>in personam</i> .					
					Adjective, providing for the protection of rights.				

Public law.

It would be possible to apply the above divisions of private to public law also; but as such a classification would entail considerable inconvenience in our view of the criminal law, we prefer to adopt the arrangement of public law (*d*) under the heads of—

- I. Constitutional Law;
- II. Administrative Law;
- III. Criminal Law;
- IV. Criminal Procedure; and
- V. The Law and Procedure relating to the state in its *quasi-private* personality.

(*d*) Holland's *Jurisprudence*, pp. 245—247.

Hence, criminal law and criminal procedure, the subjects of our present inquiry, are two subdivisions of public law (*e*).

§ 2. *Nature of a Crime.*

In accordance with the preceding division of law, a crime may be defined as the violation of a right subsisting between the state and a subject (*f*), and affecting the whole community, considered as a community. Definition of a crime.

A tort, on the other hand, is a violation of the private or civil rights (other than those arising under a contract) subsisting between individuals, considered as individuals. Distinction between crimes and torts.

This distinction between crimes and torts may at first sight appear a fine one; for the same set of circumstances will from one point of view constitute a tort, while from another point of view they amount to a crime.

In the case, for instance, of an assault, the right violated is that which every man has, that his bodily safety shall be respected, and for the wrong done to this right the injured party is entitled to claim damages; from this point of view, therefore, this violation is a tort. But this is not all. The act of

(*e*) For a further discussion of the nature of law, and rights, the student is referred to Prof. Holland's *Jurisprudence*, and Austin's writings on that subject. As in the present treatise we are dealing merely with criminal law and procedure, it is beyond its scope to further discuss the three other subdivisions of public law.

(*f*) In 4 Steph. Comm. p. 4, a crime is defined as the violation of a right, when considered in reference to the evil tendency of such violation, as regards the community at large.

violence is a menace to the safety of society generally, and will therefore be punished by the state; hence from this point of view the violation amounts to a crime. Similarly a libel violates not only the right of an individual not to be defamed, but also the right of the state that no incentive shall be given to a breach of the peace(*g*).

§ 3. *Essentials of a Crime.*

Essentials of
a crime.

In order that an act or omission may constitute a crime two essentials are requisite.

I. Either—

- (a) *Criminal intent*, which is synonymous with the word *malice* in its legal sense: or
- (b) *Criminal negligence*, *e. g.*, it is A.'s duty, by contract, as the banksman of a colliery shaft, to put a stage on the mouth of the shaft in order to prevent loaded trucks from falling down. A. omits to do so, either carelessly or intentionally, and a truck falls down the shaft and kills B. A. is in the same position as if he had actually pushed the truck down the shaft carelessly or intentionally (*h*): or
- (c) *Criminal knowledge*, *e. g.*, A., finding B. asleep on straw, lights the straw, meaning to do B. serious injury, but not to kill him. B. is burnt to death. A. is guilty of murder (*i*).

II. *An overt act*, or such an act (other than the

(*g*) Holland's Jurisprudence, pp. 217, 218.

(*h*) *R. v. Hughes*, D. & B. 248.

(*i*) *Errington's case*, 2 Lewin, 217.

confession of the party charged) as indicates his criminal knowledge or intention (*k*).

Where these two essentials are present, a person is *primâ facie* considered responsible, and rendered liable to the consequences attached by the law to the particular act or omission in question.

§ 4. *Classification of Crimes.*

The main classification of crimes is threefold :— Divisions of crime.
 (i) Treason; (ii) Felony; (iii) Misdemeanor—though treason is strictly included in the term felony, and the remarks which apply to felonies apply generally to treasons also (*l*).

A felony is such a crime as occasioned at common law the forfeiture of lands and goods (*m*). Definitions of felony and misdemeanor.

A misdemeanor is such an offence as falls short of a felony.

The chief points of distinction between a felony and misdemeanor are as follows :— Distinction between felonies and misdemeanors.

- (i) In felonies there may be accessories: in misdemeanors (as also in treason) all are considered principals.
- (ii) Arrest is justifiable in certain cases of supposed felony, where it would not be in cases of supposed misdemeanor.
- (iii) The trial of misdemeanors may be either by

(*k*) Austin, vol. ii. p. 1095; cf. 4 Steph. Comm. p. 21.

(*l*) Harr. Crim. Law, p. 8; 4 Steph. Comm. p. 7; Steph. Digest of the Crim. Law, p. 12.

(*m*) The word felony is derived by Sir H. Spelman from two northern words, *fee*, which signifies the fief or beneficiary estate, and *lon*, the price or value; thus marking an act grave enough to cause forfeiture of property.

indictment, inquisition, or information; of felonies by the first two only.

(iv) The right of peremptory challenge is confined to those charged with felony.

(v) A felony must be prosecuted before a civil action is commenced with reference to the same act: in misdemeanors there is no such necessity (*n*).

(vi) The law requires that certain terms of penal servitude should be inflicted on those convicted of felony after a previous conviction for felony, or for certain misdemeanors: whereas there is no such provision with regard to misdemeanors committed after a previous conviction (*o*).

(vii) In felonies the prisoner must be present throughout the trial, and the jury, when the trial has once commenced, are not allowed to separate till their verdict has been given, or they have been discharged from giving a verdict: in misdemeanors the trial may proceed in the absence of the accused, if he has previously pleaded, and

(*n*) Doubt has been thrown on this doctrine by the decision of Watkin Williams, J., in *Midland Counties Insurance Co. v. Smith and Wife*, 45 L. T., N. S. 411, wherein it is laid down that the true principle of the common law is, that there is neither a merger of the civil right, nor is it a strict condition precedent to such right that there shall have been a prosecution of the felon, but that there is a duty imposed upon the injured person not to resort to the prosecution of his private suit *to the neglect and exclusion* of the vindication of the public law.

(*o*) See the instances quoted in Steph. Dig. of the Crim. Law, pp. 15, 16.

the jury are allowed to separate in the course of the trial, as in civil cases.

- (viii) One of the chief distinctions between felonies and misdemeanors has now been abolished; for by 33 & 34 Vict. c. 23, it is enacted that no confession, verdict, inquest, conviction, or judgment of or for treason, felony, or *felo de se* shall cause any attainder or corruption of blood or any forfeiture or escheat; but this Act shall not affect forfeiture consequent upon outlawry.

§ 5. *Facts which Negative or Limit Responsibility.*

The general rule of the English law is that no person shall be exempted from punishment for violating the laws of his country, excepting such as are expressly defined and excused by the laws themselves.

In certain cases, however, the law frees from responsibility the doer of a forbidden act, the grounds of exemption being (*p*)—

- (i) Infancy,
- (ii) Coverture,
- (iii) Insanity,
- (iv) Drunkenness,
- (v) Ignorance,
- (vi) Accident,
- (vii) Compulsion,
- (viii) Self-defence,
- (ix) Provocation,

(*p*) Vide 4 Steph. Comm. p. 22 et seq.; Holland's Jurisprudence, p. 256; Austin, ii. p. 1095; Bentham, Principles of Morals and Legislation, chap. xiii. § 3.

- (x) Consent of the party injured,
- (xi) Public welfare,
- (xii) Lawful authority.

It is, therefore, necessary to examine each of these pleas in turn and see to what extent each does or does not prove a good and valid ground of exemption.

(i) *Infancy.*

The period of infancy, though fixed by the English law at twenty-one years, undergoes a three-fold division when an infant's criminal responsibility is under consideration.

At common law.

- (a) No act done by any person under the age of seven is a crime; the law considering the mental capacity of a child of such tender years to be too immature to enable it to form a sufficient judgment of right and wrong (*q*).
- (b) No act done by any person over seven is a crime, unless proof be given that such person had sufficient capacity to know that the act was wrong (*r*). *E.g.*, A. aged ten killed B. and hid the body, thus manifesting a consciousness of guilt, and a discretion to discern between good and evil: A. was convicted and hanged.

The cases of rape and similar offences are, however, exceptions; for an infant of this age is deemed incapable of their commission.

- (c) An infant over the age of fourteen is responsible in all cases, except for certain omissions,

(*q*) Vide 1 Russ. Cr. p. 108; also Oke, Mag. Syn. vol. ii. 882.

(*r*) Ibid. pp. 7—10; and *R. v. Owen*, 4 C. & P. 236. See also *York's case*, Fost. 70.

as the non-repair of a bridge or highway ;
for, not having the control of his fortune,
he wants the capacity to carry out the
requirements of the law.

For the purposes of the Summary Jurisdiction Act, 1879 (*s*), however, a division has been adopted differing from that of the common law ; for by the provisions of this Act, when a *child* (*i. e.*, a person who in the opinion of the Court is *under the age of twelve*) is charged with any indictable offence, other than homicide, before a Court of summary jurisdiction, such Court may, if they think it expedient, and if the parent or guardian of the child, on being informed of the right of trial by jury, does not object, deal summarily with the offence, and inflict certain specified punishments (*t*).

By the
Summary
Jurisdiction
Act, 1879.

This section, however, does not render liable a child who is not, in the opinion of the Court, above the age of seven years.

Moreover, when a *young person* (*i. e.*, one who in the opinion of the Court is *of the age of twelve and under the age of sixteen years*) is charged with certain specified offences (*u*), such young person may, if he

(*s*) 42 & 43 Vict. c. 49.

(*t*) Ibid. ss. 10, 15. Imprisonment for not more than a month, or fine not exceeding forty shillings ; and in the case of a male whipping in addition to or in substitution for any other punishment.

(*u*) Ibid. s. 11. Simple larceny ; offences declared by statute to be punishable as simple larceny ; stealing from the person ; larceny as a clerk or servant ; embezzlement by a clerk or servant ; receiving stolen goods ; aiding, abetting, counselling, procuring or attempting, any of the foregoing ; offences with intent to endanger the safety of persons upon railways ; offences with intent to injure railway engines, &c. ; offences under the post-office laws.

or she consent, and the Court think it expedient, be dealt with summarily and undergo certain specified punishments (s).

Lastly, when an *adult* (i. e., any person who, in the opinion of the Court, is of the age of *sixteen years or upwards*) consents, he may be dealt with summarily under the Act.

(ii) Cover-
ture.

With regard to coverture, the general rule seems to be that, if a married woman commits a *felony* in the presence of her husband, the law presumes that she acted under his coercion, and such coercion excuses her act; but this presumption may be rebutted by evidence, showing that in point of fact she was not coerced.

This principle applies without doubt to

- (a) Theft,
- (b) Receiving stolen goods,
- (c) Uttering counterfeit coin.

It does not, however, apply to

- (d) Treason,
- (e) Murder,
- (f) Manslaughter,
- (g) Robbery (t).

In the case of other felonies it is more or less doubtful.

In the case of *misdemeanors* (u), the application

(s) 42 & 43 Vict. c. 49, s. 12. Imprisonment for not more than three months, or fine not exceeding ten pounds; and in the case of a male under fourteen whipping in addition to or substitution for any other punishment.

(t) Vide *R. v. Buncombe*, 1 Cox, C. C. 183, for treason, murder and robbery; *R. v. Cruse*, 8 C. & P. 556; and *R. v. Torpey*, 12 Cox, C. C. 48, for robbery.

(u) It is impossible to lay down any hard and fast rule as to

of this principle is very doubtful, though recent decisions point towards favouring the wife.

In the cases, however, of keeping a disorderly or gaming house, and offences relating to domestic matters, in which the wife is supposed to have a principal share, this presumption of coercion does not exist.

The Married Women's Property Act, 1882, does not in any way affect this legal presumption; although it does render a wife or husband liable to the other for criminal acts done in respect of that other's property.

Every person is presumed to be sane and to be (iii) *Insanity*. responsible for his acts, until proof to the contrary be given (x).

But no act is a crime, if the person who does it is at the time of its commission prevented by mental disease either—

- (a) from knowing the nature and quality of his act, *e. g.*, A. kills B. under the insane delusion that he is breaking a jar; A.'s act is not a crime: but, where A. kills B., knowing that he is killing B., but is so imbecile in mind that he is unable to form such an estimate of the nature and consequences of his act as a person of ordinary intelligence would form, the law is doubtful: or,

offences in which coercion will excuse the wife, as the authorities are contradictory. The question is fully discussed in 1 Russ. Cr. p. 145, note (b), 5th ed.

(x) *R. v. Oxford*, 9 C. & P. 525; *R. v. Stokes*, 3 C. & K. 185. The instances which follow are taken from Steph. Dig. of the Crim. Law, p. 21.

- (b) from knowing that the act is wrong (*y*), *e. g.*, A. kills B. knowing that he is killing B., and knowing that it is illegal to kill B., but under an insane delusion that the salvation of the human race will be obtained by his execution for the murder of B., and that God has commanded him (A.) to produce that result by those means. A.'s act is a crime if the word "wrong" means legally wrong, but it is not a crime if it means morally wrong: or, perhaps,
- (c) from controlling his own conduct, unless the absence of the power of control is due to his default, *e. g.*, A. suddenly stabs B. under the influence of an impulse of disease, and of such a nature that nothing short of the physical restraint of A. would have prevented the stab. A.'s act is or is not a crime, according as the above is not or is law: but if the impulse had been such that a strong motive, as, for instance, the fear of his own immediate death, would have prevented the act, then A.'s act is a crime in any case.

But an act may be a crime, although the mind of the agent is affected by disease, if such disease does not in fact produce upon his mind one or other of the effects above mentioned in reference to that act: thus A., a patient in a lunatic asylum, who is under a delusion that his finger is made of glass, poisons an attendant out of revenge for his treatment, and

(y) *Vide M'Naughten's case*, 10 Cl. & F. 200.

it is proved that the delusion had no connection whatever with this act; here A.'s act is a crime (z).

Voluntary drunkenness is an aggravation of rather ^{(iv) Drunken-} than an excuse for a crime. Thus—

- (a) A., in a fit of voluntary drunkenness, shoots B. dead, not knowing what he does. A.'s act is a crime.
- (b) A., under the influence of a drug fraudulently administered to him, shoots B. dead, not knowing what he does. A.'s act is not a crime.
- (c) A., in a fit of delirium tremens caused by voluntary drunkenness, kills B., mistaking him for a wild animal, attacking A. A.'s act is not a crime.

Drunkenness is, however, an important item in considering the question of malice. Thus:—A. is indicted for inflicting on B. an injury dangerous to life, with intent to kill B. The fact that A. was drunk when he inflicted the injury ought to be taken into account by the jury in deciding whether A. intended to murder B. or not (a).

Ignorance may be either—

- (a) Ignorance of law, or
- (b) Ignorance of fact.

(v) Ignorance

Ignorance of law, even in the case of an alien, is ^{(a) of law;} no excuse for an offence: thus, where A., an alien, ignorant of the English law, kills B. in a duel in England; A.'s act is murder, although he may have considered it to be lawful (b).

(z) Stephen's Dig. of the Crim. Law, p. 13.

(a) *R. v. Cruse*, 8 C. & P. 546.

(b) *Ex parte Barronet*, 1 E. & B. 1; cf. *R. v. Esop*, 7 C. & P. 456.

Ignorance of law may, however, be relevant in considering the question of intention: *e.g.*, A., a poacher, sets wires for game; B., a gamekeeper, under the authority of an Act of Parliament, of the existence of which A. is ignorant, seizes these wires; A. forcibly takes the wires from B., and is tried for robbery. A.'s ignorance of the Act is relevant to the question whether he took the wires under a claim of right (*c*).

Also, in the interpretation of a statute which forbids some act of a continuous nature, a reasonable time is presumed to be allowed for the discontinuance of the act so forbidden, and the ignorance of the agent of the passing of the statute is a fact relevant to the question whether his discontinuance was within such reasonable time or not: *e.g.*, A. is in command of a ship on a voyage, which during its continuance is rendered unlawful by the passing of an Act; A. continues the voyage in ignorance of the Act, and of its having been passed. The fact of A.'s ignorance is relevant to the question whether the particular voyage in which A. was engaged was one to which the Act was intended by the legislature to apply (*d*).

(b) of fact.

Ignorance of fact will or will not excuse, according as the original intention was or was not lawful: provided always that such ignorance be neither wilful nor negligent, in which cases it will not excuse. Thus:—

(a) A. makes a thrust with a sword at a spot where he has reasonable grounds to sup-

(c) *R. v. Hale*, 3 C. & P. 409; cf. *R. v. Read*, Car. & Mar. 308.

(d) *Burns v. Nowell*, L. R., 5 Q. B. D. 444; cf. *Thompson v. Farrer*, L. R., 9 Q. B. D. 444.

pose a burglar to be, and kills B. who is not a burglar. A.'s position is the same as if B. had been a burglar (*e*).

- (b) A., intending to do grievous bodily harm to B., in the dark kills C. A. is guilty of murder (*f*).
- (c) A. abducts B., a girl under sixteen, in ignorance of her age, but believing in good faith and upon reasonable grounds that B. is eighteen: A. commits the offence of abduction (*g*), under 24 & 25 Vict. c. 100, s. 55.

An accident, in order to form a valid excuse, must (vi) Accident. have happened in the performance of some lawful act; for a man is not exempted from punishment, if he is engaged at the time in some criminal act, or if he is guilty of a want of due skill and caution. Thus:—

- (a) A., in the due pursuit of his employment as a slater, lets fall a slate and kills B.: A. is not liable.
- (b) A., while committing a burglary, acci- (vii) Com-
dentally kills B.: A. is liable. pulsion.

If a person commits a crime, under threats of instant death or grievous bodily harm, continuing during the whole time of the commission of such an act, he will in most cases not be held liable: but this non-liability does not extend to cases where the death of an innocent person is the result of the act in question.

(*e*) *Levet's case*, 1 Hale, 474.

(*f*) Harr. Crim. Law, p. 28.

(*g*) *R. v. Prince*, L. R., 2 C. C. R. 154.

Thus, A., B. and C., engaged in a rebellion, compel D. to join the rebel army, and to do duty as a soldier by threats of death, continuing during the whole of his service: D.'s act is not a crime (*h*).

The violence threatened must not, however, be future, and it must be personal, for the mere apprehension of injury to one's goods or property is not sufficient.

(viii) Self-defence.

The intentional infliction of death or bodily harm is not a crime, when it is inflicted by any person in order to defend himself or any other person from unlawful violence; but he must inflict no greater injury than he in good faith and upon reasonable grounds believes to be necessary.

If a person is unlawfully assaulted by another with a deadly weapon, without any fault of his own, it is his duty to retreat as far as he can with safety to himself, before inflicting death or grievous bodily harm upon the person assaulting him; *e.g.*, A., a madman, violently attacks B. in such a manner as to cause instant danger to B.'s life. B. may kill A., though A. is not committing any crime (*i*).

(ix) Provocation.

Provocation is a plea which may be raised in mitigation of punishment in the cases of homicide and assault, but is chiefly important in the former case in determining whether the slaying amounts to the crime of murder or merely of manslaughter. If the act which causes death is done in the heat of passion, caused by provocation, the agent is guilty of manslaughter only, unless the provoca-

(*h*) *R. v. M'Growther*, 18 St. Tr. 394.

(*i*) *Steph. Dig. of the Crim. Law*, pp. 136—138.

tion was sought by the offender as an excuse for killing for doing bodily harm (*k*).

Such provocation may consist of—

- (a) An assault and battery of such a nature as to inflict bodily harm or great insult; or,
- (b) The sight of certain acts of immorality committed on one's wife or child; or,
- (c) An unlawful imprisonment.

But in all these cases, in order to reduce the homicide to the crime of manslaughter, the person provoked must at the time of the commission of the act be deprived of the power of self-control by the provocation which he has received.

It is uncertain to what extent the above acts of provocation will excuse those who are with the person provoked at the time, and to his friends who, in the case of a mutual combat, take part in the fight for his defence (*l*).

The consent of the party injured may in some (x.) Consent. cases be pleaded in bar of punishment, where the consent is freely given by a rational and sober person so situated as to be able to form a rational opinion upon the matter to which he consents.

Thus, everyone has a right to consent to the infliction of a bodily injury in the nature of a surgical operation upon himself or any child under his care and too young to exercise a reasonable discretion in the matter: and everyone has a right to consent to the infliction upon himself of bodily harm not amounting to a maim (*m*).

(*k*) Vide Steph. Dig. of the Crim. Law, pp. 161—165.

(*l*) For further discussion of this subject, see 1 Russ. Cr. (5th ed.), p. 704.

(*m*) Maim, or mayhem, is defined as a bodily harm whereby
H. C

But no one has the right to consent to the infliction upon himself of—

- (a) Death ;
- (b) An injury likely to cause death, except in the case of a surgical operation ;
- (c) Bodily harm amounting to a maim for any purpose injurious to the public ;
- (d) Bodily harm, inflicted in such a manner as to amount to a breach of the peace, or in a prize fight, or other exhibition calculated to draw together disorderly persons.

The following cases may be taken in illustration of the above rules :—

- (1) A. and B. agree to fight a duel with deadly weapons. If either is killed or wounded his consent is immaterial (*n*).
- (2) A. gets B. to cut off A.'s hand in order that A. may avoid labour and be enabled to beg. Both A. and B. commit an offence (*o*).
- (3) A prize fight is illegal, and all persons aiding and abetting therein are guilty of assault ; the consent of the principals to the interchange of blows is no answer to the charge (*p*).

The welfare of the state has served as a pretext

a man is deprived of the use of any member or sense which he can use in fighting, or by the loss of which he is generally and permanently weakened ; but a bodily injury is not a maim merely because it is a disfigurement. Thus, to knock out a front tooth is, to cut off a man's nose is not, a maim.

(*n*) *R. v. Barronet*, Dear. 51.

(*o*) 1 Inst. 107, a, b.

(*p*) Vide *R. v. Coney*, L. R., 8 Q. B. D. 534. Cf. *R. v. Billingham*, 2 C. & P. 234, and *R. v. Perkins*, 4 C. & P. 537.

for all crimes (q); but as the cases where such a plea would be applicable are happily rare, it is unnecessary in a work like the present to do more than mention it as a ground of excuse.

The intentional infliction of death or bodily harm is not a crime, when it is done by any person—

- (a) in the due execution by the proper officer of a lawful sentence passed by a competent Court; or
- (b) in the prevention of a felony where the felon so acts as to give reasonable grounds for supposing that he intends to accomplish his purpose by open force; or
- (c) in the arrest, recapture, or retention of a felon, even though the felon offers no violence to any person;

Provided always in the last two instances that the object for which death or harm is inflicted cannot be otherwise accomplished.

In the case of a general and dangerous riot, the plea of lawful authority would excuse the acts of those persons duly authorized to engage in its suppression, and acting within the scope of that authority.

§ 6. *Period of Time which will bar a Criminal Prosecution.*

By the common law, there is no time limited after the commission of a crime within which an indictment must be preferred. Certain statutes have,

(q) Vide Bentham, *Theory of Legislation*, p. 266.

however, in the cases of a few crimes, imposed limitations which may be thus enumerated (r):—

- (a) 7 & 8 Will. III. c. 3, s. 5. For treason, if committed in Great Britain, three years.
- (b) 60 Geo. III. & 1 Geo. IV. c. 1, s. 7. For training to arms and military practice, six months.
- (c) 9 Geo. IV. c. 69, s. 4. For poaching offences under the statute, one year.
- (d) 16 & 17 Vict. c. 107, s. 303. For offences against the Customs Act, three years.
- (e) 31 Eliz. c. 5. Indictments or informations upon any statute penal, whereby the forfeiture is limited to the sovereign, two years.
- (f) 31 Eliz. c. 5. Where the forfeiture is limited to the sovereign and the prosecutor, one year.
- (g) 46 & 47 Vict. c. 51, s. 51. A proceeding against a person in respect of any offence under the Corrupt Practices Prevention Act or under this Act must be commenced within one year after the commission of the offence, or, if it was committed with reference to an election with respect to which an inquiry is held by election commissioners, then within one year after the commission of the offence, or within three months after the report of such commissioners is made, whichever period last expires, so that it be commenced within two years after the commission of the offence.

(r) Harr. Crim. Law, ed. 3, p. 354.

In all cases under these two Acts the proceedings are to date from the service or execution of the summons, warrant, writ or other process, except where the service or execution thereof is prevented by the absconding or concealment or act of the alleged offender.

§ 7. *Parties to a Crime.*

Every person engaged in the commission of a crime is either a principal or an accessory. Principals are classified as—

(a) Principals in the first degree.

(b) Principals in the second degree.

Accessories are classified as—

(a) Accessories before the fact.

(b) Accessories after the fact.

A principal in the first degree is one who either actually commits, or employs an innocent agent to commit, or takes part in the actual commission of a crime, whether he is on the spot when the crime is committed or not. Thus, where A. tells B., a child under seven, to bring to A. money belonging to C., and B. does so, A. is a principal in the first degree (*s*). Principals in first degree.

Also, where A. lays poison for B., which B. takes in A.'s absence, A. is a principal in the first degree (*t*).

Where a crime is committed partly in one place and partly in another, any one who commits any part of it in any place is a principal in the first degree.

(*s*) *R. v. Manley*, 1 Cox, C. C. 104.

(*t*) *Foster*, 349.

Thus, where A. steals goods, and deposits them in a place where B. by previous concert carries them away for sale, A. and B. are both principals in the first degree (*u*).

Principals in
second degree.

Whoever aids or abets the actual commission of a crime, either at the scene of its commission or elsewhere, is a principal in the second degree. Thus, A., B., C. and D. go out with a common design to rob; A. commits the robbery; B. stands by ready to help; C. is stationed at a distance to warn them of anyone's approach; D. is posted with a conveyance to favour the escape of the others; A. is a principal in the first, B., C., D. in the second degree (*x*).

When several persons take part in the execution of a common criminal purpose, each is a principal in the second degree in respect of every crime committed by any one of them in the execution of that purpose.

Provided always, that if any of the offenders commits a crime foreign to that purpose, the others are neither principals in the second degree nor accessories, unless they actually instigate or assist in its commission. For example,

(1) Several constables go to arrest A. at a house containing several persons, including B., C., D. The latter assist in driving off the former, and one of the constables is killed. A., B., C., D. are each responsible for the constable's death (*y*).

(2) A. and B. go out to commit a theft. A., un-

(*u*) *R. v. Kelly*, 2 C. & K. 379.

(*x*) *Foster*, 350.

(*y*) *Sissinghurst House case*, 1 Hale, P. C. 462.

known to B., puts a pistol in his pocket, and shoots a man with it. B. is not responsible for the shot (z).

Mere presence on the occasion when a crime is committed does not make a person a principal in the second degree, even if he makes no effort to prevent the crime, or to arrest the criminal; but such presence may be evidence for the consideration of the jury of an active participation in the crime.

Moreover, when the existence of a particular intent forms part of the definition of an offence, a person charged with aiding and abetting the commission thereof must be shown to have known of the existence of the intent on the part of the person so aided.

E. g., B. is indicted for inflicting on C. an injury dangerous to life with intent to murder: A. is indicted for aiding and abetting B. A. must be shown to have known of B.'s intent to murder C., and it is not enough to show that A. helped B. in what he did (a).

The punishment of a principal in the second degree is generally the same as that of a principal in the first degree.

An accessory before the fact is one who, being absent at the time of its commission, directly or indirectly counsels, procures, or commands any felony or piracy which is committed in consequence of such counselling, procuring, or command. Accessory before the fact.

But mere knowledge of a person's intention to commit such felony or piracy, or conduct connected

(z) *Duffey's case*, 1 Lew. 194.

(a) *R. v. Cruse*, 8 C. & P. 546. Cf. *R. v. Coney*, 8 Q. B. D. 534.

with and influenced by such knowledge, is not sufficient to constitute a person an accessory before the fact.

E. g., A. supplies B. with a drug, knowing that B. means to use it to procure her own abortion, but being unwilling that she should take the drug, and giving it to her because she threatens to kill herself if he did not. B. does so use it and dies. Even if B. be guilty of murdering herself, A. is not an accessory before the fact to such murder (*b*).

Moreover, where a person instigates another to commit a crime, and that other commits the crime in a way different from that advised, or commits a crime different from that advised, but likely to be caused by such instigation, the instigator is an accessory before the fact. Thus—

- (a) A. advises B. to murder C. by shooting; B. murders C. by stabbing. A. is an accessory before the fact to C.'s murder (*c*).
- (b) A. instigates B. to rob C.; B. does so; C. resists and is killed by B. A. is an accessory before the fact to C.'s murder (*d*).

But where one person instigates another to commit a crime, and that other commits a totally different crime, then the instigator is not an accessory before the fact.

E. g., A. instigates B. to murder C.; B. murders D. A. is not an accessory before the fact to the murder of D. (*e*).

(*b*) *R. v. Fretwell*, L. & C. 161. Contrast *R. v. Russell*, 1 Moody, 356. (*c*) Foster, 370. (*d*) *Ibid.* 369, § 1.

(*e*) 1 Hale, P. C. 618. He would, however, probably be guilty of inciting to the commission of a crime.

Also, if an accessory before the fact countermands the execution of the crime, before it is executed, he ceases to be an accessory before the fact, if the principal had notice of the countermand before the execution of the crime, but not otherwise.

The above rules apply only to cases of felony and piracy, for everyone, who in the cases of felony and piracy would be an accessory before the fact, is in the cases of treason and misdemeanors a principal.

The punishment of accessories before the fact is the same as that of principals. (24 & 25 Vict. c. 94, s. 1.)

An accessory after the fact is one who, knowing ^{Accessory after the fact.} a *felony* to have been committed, either

- (a) rescues the felon from arrest for such felony, or
- (b) intentionally and voluntarily permits him to escape when in custody for such felony, or
- (c) opposes his arrest for such felony, or
- (d) receives, assists or comforts him, in order to enable him to escape punishment, except in the case of a wife so acting towards her husband.

In the case of a *misdemeanor*, there are no accessories after the fact; those who merely assist after a misdemeanor has been committed not being punishable: but where an act amounts to the misdemeanor of rescue, obstruction of an officer or the like, the offender is liable to punishment as for a distinct offence (*f*).

The punishment of an accessory after the fact is in general imprisonment for a maximum term of

(*f*) *R. v. Greenwood*, 21 L. J. (M. C.) 127.

two years, with or without hard labour; but in the case of murder, penal servitude for life or not less than five years, or imprisonment with or without hard labour to the extent of two years.

Finally, accessories, whether before or after the fact, may be treated as such, or charged with a substantive felony, but if once tried in either of these characters the other must not afterwards be resorted to (*g*).

§ 8. *Attempts to commit a Crime.*

An attempt to commit a crime is an act done with intent to commit that crime, and forming part of a series of acts which would constitute its actual commission if it were not interrupted.

Hence, even where the offender voluntarily desists from the actual commission of a crime, he may be guilty of an attempt to commit it.

But where an act is done with intent to commit a crime, the commission whereof is in fact impossible in the manner proposed, such an act is not an attempt to commit that crime. Thus—

(a) A., with intent to coin bad money, procures dies.

A. has attempted to coin bad money (*h*).

(b) A. kneels down in front of a stack of corn and strikes a light, with intent to set fire to the stack; but, observing that he is watched, blows it out. A. has attempted to set fire to the stack (*i*).

(*g*) 24 & 25 Vict. c. 94, s. 34; c. 96, s. 98; c. 97, s. 56; c. 98, s. 49; c. 99, s. 35; c. 100, s. 67. See also *Harr. Crim. Law*, p. 40; and *R. v. Falcon*, L. & C. 217.

(*h*) *Roberts' case*, Dearsley, C. C. 539.

(*i*) *R. v. Taylor*, 1 F. & F. 511.

- (c) A. puts his hand into B.'s pocket with intent to steal whatever he finds there; the pocket is empty. A. has not attempted to steal from B.'s person (*k*).

Every attempt to commit a crime, whether treason, felony, or misdemeanor, is a misdemeanor, unless otherwise provided for (*l*).

§ 9. *Incitement and Conspiracy to commit a Crime.*

Everyone who incites another to commit a crime Incitement. commits a misdemeanor, whether the crime is or is not committed (*m*).

Hence a person, who cannot be convicted as an accessory before the fact, may be guilty of incitement to the commission of a crime.

When two or more persons agree to commit a Conspiracy. crime, they are guilty of conspiracy, whether the crime is or is not committed.

Conspiracy is a misdemeanor, punishable by fine or imprisonment, or both; in the case of conspiracy to murder, by penal servitude for ten years.

§ 10. *Punishments.*

The punishments known to the English law consist of death, penal servitude, imprisonment with and without hard labour, solitary confinement, whipping, fine, detention in a reformatory school,

(*k*) *Collin's case*, L. & C. 471. A. might, however, be found guilty of an assault on B., with intent to commit a felony.

(*l*) Steph. Dig. of the Crim. Law, p. 39.

(*m*) Vide *R. v. Welham*, 1 Cox, C. C. 193, where the cases of incitement and attempt to commit a felony are contrasted.

subjection to police supervision, putting under recognizance.

(a) Death is inflicted by hanging the offender by the neck until he is dead (*n*).

(b) Penal servitude(*o*) consists in keeping the offender in confinement, and compelling him to labour in the manner and under the discipline appointed by 16 & 17 Vict. c. 99; 20 & 21 Vict. c. 3; 27 & 28 Vict. c. 47.

(c) There are three kinds of imprisonment:—

(i) *As a first class misdemeanant*, in which case the prisoner may maintain himself, procure or receive food, wine, clothing, bedding, or other necessities, and follow his trade or profession, if such employment does not interfere with the regulations of the prison;

(ii) *Without hard labour*, in which case the visiting justices must provide for the employment of the prisoner, subject to the rule that no punishment may be inflicted for neglect of work, except by alteration in the scale of the prisoner's diet;

(iii) *With hard labour*, such hard labour being for not more than ten nor less than six hours a day, and consisting either of work at the treadmill, shot drill, crank, capstan, stone breaking, and other descrip-

(*n*) 28 & 29 Vict. c. 126, sch. 1, provides for the treatment of a criminal under sentence of death.

(*o*) See also 5 Geo. 4, c. 84, and *R. v. Mount*, L. R., 6 P. C. 283.

tion of *hard bodily labour*, appointed by the justices in sessions with the approval of the Secretary of State, or of such other *bodily labour* as may be appointed by the same authority with the same approval (*p*).

In cases (ii) and (iii) the prisoners must be kept separate.

(d) Solitary confinement must not be inflicted for more than one month at a time, nor for more than three months in any one year (*q*).

(e) Whipping must be inflicted within six months after the sentence, and, in the case of a person sentenced to penal servitude, before removal to a convict prison.

For a person under sixteen, the number of strokes must not exceed twenty-five, and the instrument used must be the birch rod.

In the case of any other male offender the number of strokes must not exceed fifty.

In each case the sentence must specify the number of strokes, and the instrument (*r*).

In the case of a summary conviction before justices of an offender under fourteen, not more than twelve strokes of the

(*p*) 28 & 29 Vict. c. 126, ss. 17, 19.

(*q*) 7 Will. 4 & 1 Vict. c. 90, s. 5.

(*r*) 24 & 25 Vict. c. 96, s. 119; c. 97, s. 75; c. 100, s. 70; 26 & 27 Vict. c. 44, s. 1.

birch rod may be inflicted (*s*); and where the age of the offender is under ten, the number of strokes must not exceed six.

- (f) The punishment of detention in a reformatory school is regulated by 29 & 30 Vict. c. 117, and may be inflicted for a term of not less than two nor more than five years on offenders under sixteen convicted of an offence punishable with penal servitude or imprisonment, and sentenced to be imprisoned for at least ten days.

In the case of an offender under ten, such detention must not be inflicted unless he has been previously charged with some offence punishable with penal servitude or imprisonment, or is sentenced by a judge of assize, or Court of general quarter or quarter sessions.

- (g) In the cases of felony and certain misdemeanors (*t*), where a previous conviction for felony or any such misdemeanor is proved, the offender may, in addition to any other punishment, be sentenced to police supervision for seven years or less, to commence after the expiration of his other punishment.

Such subjection to police supervision involves—

- (i) Notification of place or change of residence within forty-eight hours;

(*s*) 25 Vict. c. 18, s. 1, and 42 & 43 Vict. c. 49, ss. 10, 11.

(*t*) These are specified in Steph. Digest of the Crim. Law, p. 16, note 2.

(ii) A report of himself once a month (*u*).

If default be made in either of these respects, the offender is liable to imprisonment, with or without hard labour, for twelve months.

(h) Putting under recognizance consists in ordering the offender to promise to pay to the Crown a certain sum of money if he breaks the condition thereof, and to find sureties therefor.

In default of giving such security, the offender may be ordered to be imprisoned.

§ 11. *Cumulative Punishments.*

When sentence is passed for felony on a person already imprisoned under sentence for another crime, the Court may order imprisonment for the subsequent offence to commence at the expiration of the previous term (*x*).

When an offender is convicted of more misdemeanors than one, he may be sentenced to a separate punishment for each offence, and the Court may direct such punishments to be cumulative (*y*).

§ 12. *Consequences of a Conviction for Treason or Felony.*

A conviction for treason or felony involves—

(a) A liability to pay the costs of the prosecution and conviction (*z*).

(*u*) 34 & 35 Vict. c. 112, ss. 8, 20; and 42 & 43 Vict. c. 55, s. 2.

(*x*) 7 & 8 Geo. 4, c. 28, s. 10.

(*y*) Vide *R. v. Castro*, L. R., 5 Q. B. D. 490; and Steph. Dig. of the Crim. Law, p. 19.

(*z*) 33 & 34 Vict. c. 23, s. 3.

- (b) A liability to pay a maximum sum of 100*l.* as compensation to any person who has suffered loss of property by means of such felony (a).
- (c) A disability, where the sentence is death or penal servitude, to sue any person or alienate or charge any property or make any contract (b).
- (d) A disability, where the sentence is death, penal servitude, or imprisonment with hard labour or for more than one year, to hold any military, naval, or civil office under the Crown, or other public employment; or to be elected, sit, or vote as a member of either House of Parliament; or to exercise any right of suffrage or other parliamentary or municipal franchise in England, Wales, or Ireland (c).

Such disabilities mentioned in (c) and (d) continue until such person has suffered the punishment to which he has been sentenced, or such other punishment as may by competent authority be substituted therefor, or until he receives a free pardon.

Moreover, if any such person holds, at the time of his conviction, any military or naval office, or any civil office under the Crown, or other public employment, or any ecclesiastical benefice, or any place, office, or emolument in any university, college, or other corporation, or is entitled to any pension or superannuation allowance, payable by the public, or out of any

(a) 33 & 34 Vict. c. 23, s. 4.

(b) Ibid. s. 8. The custody of the property of such a person is treated of in ss. 9—29.

(c) Ibid. s. 2.

public fund ; such office, benefice, employment, or place forthwith becomes vacant, and such pension, allowance or emolument forthwith determines and ceases to be payable, unless such person receives a free pardon from her Majesty within two months after such conviction, or before the filling up of such office, benefice, employment or place, if given at a later period.

PART I.

CRIMES AND OFFENCES.

Offences against the Government.

Q.—What is the crime of treason?

A.—Treason, *proditio*, in its very name, imports a betraying, treachery, or breach of faith; and the crime of which we here speak is treachery against the sovereign or liege lord. (4 Steph. Comm. p. 164.)

Q.—What acts are treason under the statute of Edward III.?

A.—(1.) “When a man doth compass or imagine the death of our lord the king, of our lady his queen, or of their eldest son and heir.” Under this description it is held that a queen regnant is within the words of the act, being invested with royal power and as such entitled to the allegiance of her subjects as if she had been a king, but the husband of such a queen is not comprised in these words, and therefore no treason can be committed against him. The king here intended is the king in possession without any respect to his title; for it is held that a king *de facto* and not *de jure*, or, in other words, an usurper that hath got possession of the throne, is a king within the meaning of the statute; as there is a temporary allegiance due to him for his administration of the government and temporary protection of the public.

(2.) If a man do violate the king’s companion or the king’s eldest daughter unmarried, or the wife of the king’s eldest son and heir.

(3.) If a man do levy war against our lord the king in his realm.

(4.) If a man be adherent to the king's enemies in his realm, giving to them aid and comfort in the realm or elsewhere.

(5.) If a man slay the chancellor, treasurer, or the king's justices of the one bench or the other, justices in eyre, or justices in assize and all other justices, being in their places doing their offices. (4 Steph. Comm. pp. 166 *et seq.*)

Q.—How is compassing or imagining the death of the sovereign to be evidenced?

A.—As this compassing or imagining is an act of the mind it cannot possibly fall under any judicial cognizance, unless it be demonstrated by some open or overt act. (4 Steph. Comm. p. 168.)

Q.—What will constitute an overt act?

A.—Any act wilfully attempted or done which may endanger the life of the sovereign, *e.g.*, a meeting of conspirators to consider means for killing the sovereign or usurping the authority of government. (*R. v. Vane*, Kel. 15; *R. v. Hardy*, 1 East, P. C. 60.)

Q.—Can mere words constitute treason?

A.—How far mere words spoken by an individual, and not relative to any treasonable act or design then in agitation, shall amount to treason has been formerly matter of doubt; but now it seems clearly to be agreed that by the common law and the statute of Edward III. words spoken amount to a high misdemeanor, and not treason. If words be set down in writing it argues more deliberate intention; and it has been held that writing is in itself an overt act of treason, for "*scribere est agere.*" But even in this case bare words are not

the treason, but the deliberate act of writing them, though in later times even this has been questioned. (4 Steph. Comm. p. 169.)

Q.—Is there any limitation as to time within which a prosecution for treason must be instituted?

A.—The offence of treason is (by exception from the general rule of the Crown law) subject to limitation in respect of time; for by 7 Will. III. c. 3, no person shall be prosecuted for treason but within three years after the commission of the offence, except only in the case of a designed assassination of the sovereign by poison or otherwise.

Q.—What was formerly, and what is now, the punishment for treason?

A.—Until recently the punishment of treason appointed by law was more terrible than those inflicted for the crime of murder itself. For the sentence ran—
1. That the offender be drawn on a hurdle to the place of execution; 2. That he be hanged by the neck until he be dead; 3. That his head be severed from his body; 4. That his body be divided into four quarters; 5. That his head and quarters be at the disposal of the Crown. But the sovereign, after sentence, by warrant under his sign-manual, countersigned by a principal secretary of state, might change the whole sentence into beheading, or even remit the capital punishment altogether; and the sentence upon women (the decency due to whose sex forbade the exposing and publicly mangling their bodies) was only that they were to be drawn to the place of execution and hanged by the neck until they were dead. And now, by the Felony Act, 1870 (33 & 34 Vict. c. 23), s. 31, the only

portion of the sentence previously in use which is retained for the future, is that part which directs that the traitor shall be hanged by the neck till he be dead. (See 4 Steph. Comm. p. 179.)

Q.—Is there any limit to the number of overt acts that may be included in any indictment for treason?

A.—Any number of overt acts may be mentioned in the indictment, but one is sufficient to establish the treason. There must be two witnesses to prove the offence, unless the prisoner confess the crime. (7 & 8 Will. III. c. 3.)

Q.—What special facilities are given to any person charged with treason of preparing his defence?

A.—On an indictment for treason (or misprision of treason) the prisoner is entitled to a copy of the indictment, a list of witnesses to be called, and of the petty jurors, such documents to be delivered to him ten days before the trial. (7 Anne, c. 1, s. 11.) But this does not extend to cases of compassing and imagining the death of the sovereign (or misprision of such a treason), when the overt act is against the person or life of the sovereign. In such cases the accused is indicted, arraigned and tried upon the like evidence and in the same manner as on a charge of murder, but if found guilty the penalty is the same as in treason. (39 & 40 Geo. III. c. 93; 5 & 6 Vict. c. 51, s. 1.)

Q.—What crimes have been added recently to the list of treasonable offences, in addition to those already named?

A.—By the statute 1 Anne, st. 2, c. 17, s. 3, if any

person shall endeavour to deprive or hinder any person being the next in succession to the Crown, according to the limitations of the Act of Settlement, from succeeding to the Crown, and shall maliciously and directly attempt the same by any overt act, such offence shall be treason. By statute 6 Anne, c. 7, if any person shall maliciously, advisedly and directly by writing or printing maintain and affirm that any other person hath any right or title to the Crown of this realm, otherwise than according to the Act of Settlement; or that the kings of this realm, with the authority of parliament, are not able to make laws and statutes to bind the Crown and the descent thereof, such person shall be guilty of treason.

By 36 Geo. III. c. 7 (which was at first temporary only, and was made perpetual by 57 Geo. III. c. 6), if any person shall, either within the realm or without, compass, imagine, or intend death, destruction, or any bodily harm tending to death or destruction, maim or wounding, imprisonment or restraint of the person of the king, his heirs or successors, and shall express, utter or declare such intention by publishing any printing or writing, or by any overt act, he shall be adjudged a traitor.

Q.—What is misprision of treason?

A.—Misprision of treason consists of the bare knowledge and concealment of treason, without any assent thereto, for any assent makes the party a principal traitor. Prior to 1 & 2 Phil. & Mary, c. 10, a bare concealment of treason was punishable as treason, but by that act it is enacted that a bare concealment shall be only held a misprision.

Q.—What offence is it to discharge, point, or aim any gun or other arms at the person of the Queen?

A.—Any one so offending is guilty of a high misdemeanor, and is made liable to penal servitude for seven, or not less than five, years, or to imprisonment for three years, and (if the court shall so direct) to be whipped not more than thrice publicly or privately during that period. (16 & 17 Vict. c. 99; 20 & 21 Vict. c. 5.)

Q.—Of what crime is any person guilty who shall compass, imagine, or intend to depose the Queen or her successors from the Crown of the United Kingdom, or to levy war upon her Majesty in order to compel a change of measures or counsels, or to intimidate or overawe Parliament, and shall express or utter such intention by publishing or writing the same or by any other overt act?

A.—By 11 & 12 Vict. c. 12, the person so offending shall be guilty of felony, and on conviction is liable (at the discretion of the court) to penal servitude for life, or for any term not less than five years, or to be imprisoned for any term not exceeding two years, with or without hard labour, as the court shall direct. These offences are sometimes known as treason felonies.

Q.—What is the offence of sedition?

A.—Sedition may be by writing or speaking against the sovereign, cursing or wishing him ill, or doing anything which may weaken his government or may prejudice his subjects against him. The truth of a seditious libel is no excuse for publication, for the 6 & 7 Vict. c. 96, which allows the truth of a libel to be pleaded under certain conditions, does not extend to seditious libels. (11 & 12 Vict. c. 12, s. 7.)

Coinage Offences.**WITH RESPECT TO GOLD AND SILVER COIN.**

Q.—What offence is it to counterfeit any of the Queen's gold or silver coin, and what is the punishment?

A.—It is a felony, and the punishment is, at the discretion of the court, penal servitude for life, or for any term not less than five years, or imprisonment for any term not more than two years, with or without hard labour and solitary confinement. (24 & 25 Vict. c. 99, s. 2.)

Q.—What offence is it to impair, lighten, or diminish any current gold or silver coin with intent to defraud, and what is the punishment?

A.—It is a felony, and the punishment is penal servitude for any term not less than five years, nor more than fourteen years, or the offender may be imprisoned as already specified. (24 & 25 Vict. c. 99, s. 4.)

Q.—What is the offence of tendering any false or counterfeit gold or silver coin, knowing the same to be false or counterfeit?

A.—This is a misdemeanor, and the punishment is imprisonment for any term not exceeding one year, with or without hard labour and solitary confinement. (24 & 25 Vict. c. 99, s. 9.)

Q.—What offence is it to make or sell medals resembling current coin?

A.—By the Counterfeit Medal Act, 1883, it is enacted that any person so offending shall be guilty of a misdemeanor and liable to imprisonment for any

term not exceeding one year, with or without hard labour. (46 & 47 Vict. c. 45, s. 2.)

IN RESPECT TO COPPER COIN.

Q.—What is the offence of, and what is the punishment for, counterfeiting copper coin?

A.—It is a felony punishable with penal servitude for any term not more than seven nor less than five years, or imprisonment for any term not more than two years, with or without hard labour and solitary confinement. (24 & 25 Vict. c. 99, s. 14.)

Q.—Is it any offence, and if so what, to utter false coin intended to pass for current copper coin?

A.—Yes; it is a misdemeanor punishable by imprisonment for any term not exceeding one year. (24 & 25 Vict. c. 99, s. 15.)

Q.—What facilities for trial are there of any person charged with coinage offences committed in various places?

A.—Where any person shall tender any counterfeit coin in one county or jurisdiction, and also tender any such coin in any other county or jurisdiction, either on the same day or within ten days thereafter, or where two or more persons acting in concert in different counties or jurisdiction shall commit any offence under that act, every such offender may be tried in any of the said counties and jurisdictions. (24 & 25 Vict. c. 99, s. 28.)

AS TO COIN OF FOREIGN STATES.

Q.—What is the offence of counterfeiting (1) foreign gold or silver coin, (2) foreign copper coin?

A.—The first offence is a felony, and the punish-

ment is penal servitude for any term not more than seven nor less than five years. The second offence a misdemeanor, and the offender may be imprisoned for the first offence for any time not exceeding one year, and on a second conviction he is liable to penal servitude for not more than seven nor less than five years, or imprisonment (with or without hard labour and solitary confinement) not exceeding two years. (24 & 25 Vict. c. 99, ss. 18, 19, 22.)

Offences against the Person.

Q.—Define homicide, and into what classes is it divided?

A.—It is destroying the life of man, the circumstances being such as to render it *justifiable*, or at least *excusable*, or else it is *felonious*.

Q.—When is homicide justifiable?

A.—Justifiable homicide is of divers kinds. First, such as is occasioned by the due *execution of public justice* in putting a malefactor to death, who has forfeited his life by the laws of this country.

But the sentence must be pronounced legally, for if the judge act without authority and the accused is executed the judge is guilty of murder.

Secondly, justifiable homicide may be committed for the *advancement of public justice*, as in the following instances: (1.) Where a police officer or his assistant, in the due execution of his office, arrests or attempts to arrest one who resists, and is consequently killed in the struggle; (2.) Where, in case of a riot or rebel-

lions assembly, such officers or assistants kill any of the mob in the endeavour to disperse them; (3.) Where the prisoners in a gaol assault the gaoler or officer, and he, in his defence, kills any of them; (4.) Where an officer or his assistant, in the due execution of his office, arrests or attempts to arrest a party for felony or for a dangerous wound given, and the party, having notice thereof, flies and is killed in the pursuit.

Thirdly, homicide is justifiable when committed for the prevention of any forcible and atrocious crime, as for the prevention of robbery or murder, or the breaking into a house in the *night-time*, but not during the *day-time*, unless it carries with it an attempt of robbery, murder, or the like.

In the event of an attempt to commit burglary at night, not only the owner, his servants and members of his family, but also any strangers present, are justified in killing the assailant; but this extreme step should not be taken until all other means have failed.

Fourthly, homicide may be justifiable where the party slain is equally innocent as he who occasions his death, as where two persons being shipwrecked, and getting on the same plank, but finding it not able to save them both, one of them thrusts the other from it, whereby he is drowned. (4 Steph. Comm. pp. 48 *et seq*; Har. Crim. Law, 155.)

Q.—When is homicide excusable?

A.—Excusable homicide is divided into two classes: *viz.*, *per infortunium*, by accident; or *se defendendo*, in self-defence. Homicide *per infortunium* is where a man doing a lawful act, without any intention of hurt, unfortunately kills another; as where a man is at work with a hatchet and the head flies off and kills a

bystander: for the act is lawful, the result unfortunate but accidental. Homicide *se defendendo* is only excusable when committed in sudden and violent cases, when immediate and certain suffering would be the result of waiting for the assistance of the law; and further, it must be shown that the person killing could not by any other means escape his antagonist, and that he had retreated as far as possible before giving the fatal blow.

Q.—Would homicide be excusable if committed not in defence of oneself, but of a near relative?

A.—Yes; under the excuse of self-defence the principal civil and natural relations are included; the act of the relation assisting being construed the same as the act of the party himself. (1 Hale, P. C. 484.)

Q.—What is the crime of suicide? Does it admit of accessories, and what is the punishment?

A.—Suicide arises when any person deliberately takes his own life; and here any person must be considered as meaning a party who has come to the years of discretion, and is in his senses, for otherwise there would be a defect in will and therefore no crime. This crime, like other felonies, admits of accessories before the fact, who may be tried and convicted as the principal felon might have been. (24 & 25 Vict. c. 94, s. 2.) Formerly, the punishment for suicide was of a very ignominious character; the *felo de se* was buried at the cross roads with a stake driven through his body, and without Christian rights of burial, and by forfeiture of all his goods and chattels to the Crown; by the 4 Geo. IV. c. 52, s. 1, the offender was to be buried in the churchyard or other burial place within twenty-

four hours of the inquest, and between the hours of nine and twelve at night, but still without Christian burial.

And now not only is burial in the highway forbidden, but the interment may be made in any manner allowed by the Burial Laws Amendment Act, 1880. (45 & 46 Vict. c. 19, ss. 2 and 3.) Forfeiture in this as in other felonies is now abolished. (33 & 34 Vict. c. 23.)

Q.—Define manslaughter.

A.—Manslaughter is defined as being the unlawful killing of another without malice express or implied (1 Hale, P. C. 466), which may be either *voluntarily* in a sudden passion, or *unintentionally* whilst committing some unlawful act.

The malice here meant is the murder-malice mentioned later.

Q.—Of what offence is a person guilty who in a sudden quarrel kills another?

A.—If upon a sudden quarrel two persons fight and one is killed, this is manslaughter; but if between the provocation and the actual contest there be time for the passions to cool, and then one of the combatants be slain, this will amount to murder, for it is deliberate revenge, and not done on the spur of the moment. (Fost. 296.)

Q.—Is it necessary in an indictment for manslaughter to set forth the manner in which the death was caused?

A.—No; it is sufficient to charge that the defendant did feloniously kill and slay the deceased. (24 & 25 Vict. c. 100, s. 6.)

Q.—What is the difference between involuntary

manslaughter and homicide excusable on the ground of accident ?

A.—As to unintentional or involuntary manslaughter, it differs from homicide excusable on the ground of accident in this : that the latter takes place upon the commission of a lawful act, the former upon an unlawful act, or upon a lawful act done in an unlawful manner.

By “unlawful” here must be understood what is *malum in se*, not merely what is *malum quia prohibitum* ; thus a man shooting at game by accident kills another, this is homicide by misadventure only, even although the party be not qualified. (Fost. 259 ; Harr. Crim. Law, 170.)

Q.—Can the crime of manslaughter be constituted through negligence ?

A.—Yes, this would be an instance of doing an act in an unlawful manner ; thus, it is A.’s duty to put a stage at the mouth of a colliery ; he omits to do so ; a truck falls down the shaft in consequence and kills B. ; if the omission arose merely through negligence, and without any criminal intent, A. is guilty of manslaughter, but if A. intended that B. should be killed he is guilty of murder. (*R. v. Hughes*, D. & B. 248.)

Q.—What is the punishment for manslaughter ?

A.—Any person convicted of manslaughter shall be liable to be kept in penal servitude for life, or not less than five years, or to imprisonment not exceeding two years, with or without hard labour, or to pay such fine as the court shall award in addition to or without any other discretionary punishment as aforesaid.

(24 & 25 Vict. c. 100, s. 5.) The court may also require the offender in this and other felonies mentioned in this division (with the exception of murder) to give security to keep the peace. (*Ibid.* s. 71.) The crime of manslaughter further carries with it the obligation to make restitution to the representatives of the deceased ; for it is enacted (9 & 10 Vict. c. 93, s. 1) that when the death of any person shall be caused by such wrongful act, neglect, or default as would (if death had not ensued) have entitled the party injured to maintain an action, and recover damages in respect thereof, then the person who would have been liable if death had not ensued shall be liable, notwithstanding the death of the party injured, and although the death shall have been caused under such circumstances as amount in law to felony. Such action shall be for the benefit of the wife, husband, parent, or child of the deceased, and be brought by the executor or administrator of the deceased within twelve months after his death ; but where there is no such executor or administrator, or no such action shall be commenced within six months of the death of deceased, then such action may be brought by and in the name of all or any of the persons for whose benefit it would be. (27 & 28 Vict. c. 95, s. 1.)

Q.—Define murder.

A.—Murder is defined by Sir Edward Coke to be “When a person of sound memory and discretion unlawfully killeth any reasonable creature in being and under the king’s peace with malice aforethought, express or implied.” The crime must be committed by a person of *sound memory and discretion*, and, therefore, all idiots, lunatics, and children of tender years

are as incapable of committing this as other crimes, on account of the defect in understanding.

Q.—If any person be indicted for murder for one species of killing, can he be convicted on evidence showing a different death?

A.—Not on evidence showing an entirely different death; but if the difference be only in detail, as where the wound is said to have been given by a sword, and it is proved to have been by an axe, it is immaterial. (2 Hale, P. C. 185.)

Q.—Within what time must death take place to constitute the crime of murder?

A.—The death must take place within a year and a day from the commission of the offence, in which computation of time the day upon which the crime was committed is counted as the first. (Hawk. P. C. b. 1, c. 31, s. 9.)

Q.—Is it murder to kill an enemy at war with the sovereign?

A.—No; the person killed must be a *reasonable creature in being and under the king's peace*. These words, therefore, only exclude alien enemies in actual warfare; for it is murder to kill an alien not at war or an outlaw, just as much as an Englishman, for both are equally under the king's peace.

Q.—Define the malice which must be present to constitute the crime of murder, and how is it divided?

A.—It is not so much spite or ill-will to the deceased in particular as a general felonious intention, and may be either express or implied.

Q.—Define express malice: must it be directed against any one person?

A.—Express malice is when one with a sedate, deliberate mind and formed design doth kill another; which formed design is evidenced by external circumstances discovering that inward intention: as lying in wait, antecedent menaces, former grudges, and concerted schemes to do some bodily harm. (1 Hale, P. C. 451.) As has been seen, malice is an intention to commit a felonious act, and therefore need not be directed against any person in particular. Thus, if a man determine to kill the first person he meets, and does so, this is murder, although the deceased was a perfect stranger, for this is universal malice. Again, if several persons cause a riot, and life is taken, murder is committed, because of the *malitia præcogitata*.

Q.—What is implied malice?

A.—The law will *imply* malice in many cases in which no actual or express malice is proved; and it may be stated as a general rule that all homicide is deemed malicious, unless justifiable or excusable. (See Steph. Dig. Crim. Law, 3rd ed. p. 158.)

Q.—Is it necessary in an indictment for murder to set forth the means of death, and what is the punishment?

A.—No; but only that the defendant did feloniously, wilfully, and of his malice aforethought kill and murder the deceased. (24 & 25 Vict. c. 100, s. 6.) The punishment for murder is death, and is now carried into effect by the execution of the prisoner within the prison walls, in the presence of the sheriff, gaoler, chaplain, surgeon, and such other prison officials as

the sheriff requires, and of such magistrates, relatives of the prisoner, or other persons as shall be considered advisable by the sheriff or visiting justices; and the body shall be buried within the prison walls. (31 Vict. c. 24.)

Q.—In case of any person being wounded at sea and dying in England, how may the accused be tried?

A.—Where any person being feloniously stricken, poisoned, or otherwise hurt upon the sea or at any place out of England or Ireland, shall die of such stroke, poisoning, or hurt in England or Ireland, or *vice versâ*, every offence committed in respect of any such case, whether the same shall amount to the offence of murder or manslaughter, or of being accessory to murder or manslaughter, may be tried in the county or place in England or Ireland in which such death, stroke, poisoning or hurt shall happen. (24 & 25 Vict. c. 100, s. 10.)

Attempts to Murder.

Q.—What acts are by the 24 & 25 Vict. c. 100, enumerated as attempts to murder, and what is the punishment?

A.—Administering poison, wounding, or causing bodily harm, with intent to murder (sect. 11).

Destroying or damaging buildings with the like intent (sect. 12).

Setting fire to a ship, or any part thereof, with the like intent (sect. 13).

Attempting to poison, shoot, drown, suffocate or strangle with the like intent (sect. 14).

And lastly, attempting to murder in any other way (sect. 15).

In all cases the punishment is the same, *viz.* : penal servitude for life or not less than five years, or imprisonment not exceeding two years, with or without hard labour, and with or without solitary confinement (sect. 11).

Threatening to Murder.

Q.—What offence is it to send letters threatening to murder?

A.—It is a felony, and the offender is liable to penal servitude for ten years, or not less than five; or imprisonment for two years, with or without solitary confinement and hard labour, or imprisonment with the addition of whipping, if a male and under the age of sixteen. (24 & 25 Vict. c. 100, s. 16.)

Encouraging Murder.

Q.—Is it any offence to write and publish in a paper articles encouraging murder?

A.—Yes. In the recent case of *Reg. v. Johann Most* (44 L. T., N. S. 823), the defendant wrote and published an article in a paper, which was sold to the public, and which article the jury found was intended to and did encourage the murder of foreign potentates, and that such encouragement was the natural and reasonable result of the article; it was held that the

defendant was guilty of a misdemeanor within sect. 4 of the 24 & 25 Vict. c. 100.

The section referred to is as follows:—All persons who shall conspire, confederate, and agree to murder any person, whether he be a subject of her Majesty or not, and whether he be within the Queen's dominions or not, and whosoever shall solicit, persuade, or endeavour to persuade, or shall propose to any person to murder any other person . . . shall be liable to penal servitude for any term not exceeding ten and not less than five years, or to imprisonment for not longer than two years, with or without hard labour.

Mayhem and Injuring the Person.

Q.—What is meant by mayhem ?

A.—The crime of mayhem consists in depriving any person of the use of such of his members as will make him less able to defend himself or to assault an adversary. It is a felony, and the offender is liable to penal servitude for life, or not less than five years, or imprisonment for two years. (24 & 25 Vict. c. 100, s. 18.)

Q.—To what punishment is any person liable who shall impede or prevent another from leaving a ship which is wrecked ?

A.—Any person unlawfully and maliciously preventing or impeding any person being on board of or having quitted any ship, which shall be in distress or wrecked, in his endeavour to save his life, or the life of any other person, shall be guilty of felony, and

punishable with penal servitude for life, or not less than five years, or imprisonment, &c. (*Ibid.* s. 17.)

Q.—What is the offence of administering laudanum or other stupefying drug to any person, with intent to enable an indictable offence to be carried out?

A.—Any one attempting to choke, suffocate or strangle any person, or applying or administering, or attempting to apply or administer, to any person any chloroform, laudanum or other stupefying or overpowering drug, with intent in either of such cases thereby to enable himself or assist any other person in committing any indictable offence, shall be guilty of felony, and punishable with penal servitude for life, or not less than five years, or imprisonment for two years, &c., but without solitary confinement. (24 & 25 Vict. c. 100, ss. 21, 22.)

Q.—What is the offence of abandoning or exposing children under the age of two years?

A.—It is a misdemeanor and punishable with penal servitude for five years, or imprisonment not exceeding two years, with or without hard labour, but without solitary confinement. (*Ibid.* ss. 26, 27.)

Q.—To what punishment is a person liable who, with intent to cause grievous bodily harm, throws vitriol or other destructive fluid over another?

A.—Any person with intent to cause grievous bodily injury, by casting or throwing over another any corrosive or destructive fluid or substance, whether such injury be effected or not, shall, in all such cases, be guilty of a felony, and the offender is liable to penal servitude for life, or not less than five years, or

imprisonment for two years, &c., with the addition of whipping, if a male and under the age of sixteen. (24 & 25 Vict. c. 100, ss. 28, 29.)

Q.—Is it lawful to set spring-guns or other dangerous engines to prevent trespassing?

A.—No; any person setting or placing, or causing to be set or placed, any spring-gun, man-trap, or other engine calculated to destroy human life or inflict grievous bodily harm upon a trespasser or other person coming in contact therewith, is guilty of a misdemeanor and liable to a maximum punishment of five years' penal servitude. But this is not to apply to a spring-gun, &c., set in a dwelling-house for protection from sunset to sunrise, nor to guns and traps to destroy vermin. (24 & 25 Vict. c. 100, s. 31.)

Abduction of Females.

Q.—What protection is by statute given to women against abduction, and to what punishment is the offender liable?

A.—By the 24 & 25 Vict. c. 100, s. 53, it is enacted that where any woman of any age shall have any interest (whether legal or equitable, present or future, absolute, conditional or contingent) in any real or personal estate, or shall be heiress or co-heiress, or presumptive next of kin to any one having such interest, it shall be felony in any person who shall, from motives of lucre, take away or detain her against her will, with intent to marry or carnally know her; or who, with the like intent, shall fraudulently allure, take away or detain any such woman, who shall be

under the age of twenty-one years, out of the possession and against the will of her father or mother, or other person having the lawful care or charge of her; and the offending party in any of the above cases is liable to penal servitude for fourteen years, and is moreover incapable of taking any part of her property, which is to be settled as may be decreed by the Court of Chancery.

The same punishment is, by sect. 54 of the above-mentioned act, to attach to any person forcibly taking or detaining a woman of any age with a similar intent.

Q.—What offence is it, and what is the punishment, for taking any girl under the age of sixteen out of the custody of her parents?

A.—It is a misdemeanor, punishable with imprisonment to the extent of two years. (*Ibid.* s. 55.)

It is no defence that the defendant did not know her to be under sixteen, or might suppose from her appearance that she was older. (*R. v. Prince*, L.R., 2 C. C. R.) And further, it is immaterial whether there be any corrupt motive, whether the girl consent, and whether the defendant be a male or female. (*R. v. Handley*, 1 F. & F. 648.)

Procuring Miscarriage.

Q.—What is the punishment attached to the crime of procuring abortion?

A.—This crime evidently may be committed by several classes of persons—the woman herself, the person supplying the instrument, &c., or some third

party. As to the first two classes of this division it is a felony, punishable with penal servitude for life, for any woman, being with child, who, with intent to procure her own miscarriage, shall unlawfully administer to herself any poison or other noxious thing, or use any instrument or other means with a like intent, or for any person who, with a similar intent, shall unlawfully administer to any woman (whether she be with child or not), or cause to be taken by her, any poison or other noxious thing, or use any instrument or other means with intent to procure her miscarriage. (24 & 25 Vict. c. 100, s. 58.) And as to the third class mentioned, it is provided that any person supplying or procuring any such poison, thing, or instrument, knowing the same is intended to be used to produce miscarriage, is guilty of a misdemeanor, and liable to penal servitude to the extent of five years. (*Ibid.* s. 59.)

Offences against Women and Children.

Q.—What is the offence of rape, and to what extent is it punishable?

A.—Rape is the offence of having carnal knowledge of a woman forcibly and against her will. A husband cannot be guilty of a rape upon his wife, and, as before stated, a boy under the age of fourteen is conclusively presumed to be incapable of committing this crime; this presumption also extends to cases of assault with intent to ravish, the law in the case of a boy supposing a weakness of body as well as mind.

But both the husband and the boy may be convicted as principals in the second degree.

To constitute rape the offence must be committed by force, and without the woman's consent; penetration but nothing further need be proved.

The woman does not consent if permission be extorted from her by force or threats of immediate bodily harm. It appears doubtful whether the offence is committed or not if the woman be beguiled into giving her consent by fraud or artifice. This crime is punishable with a maximum penalty of penal servitude for life. (24 & 25 Vict. c. 100, s. 48.)

Q.—Is it any defence to a charge of indecent assault on a girl under thirteen to prove that she consented to the act?

A.—No; it is now no defence to a charge of indecent assault upon a young person under the age of thirteen to prove that he or she consented to the act. (43 & 44 Vict. c. 45, s. 2.)

Q.—In what does the crime of kidnapping children consist?

A.—It consists in unlawfully taking or detaining a child under the age of fourteen, or receiving or harbouring such child knowing it to have been stolen, with the intent either of depriving the parent or other persons having its lawful charge of its possession, or stealing any article on its person. The offence is a felony, the maximum punishment for which is seven years' penal servitude, or imprisonment for any term not exceeding two years with or without hard labour, and whipping if a male and under the age of sixteen. (24 & 25 Vict. c. 100, s. 56.)

Q.—Is there any limit put by statute upon the number of children that may be taken charge of by any person for hire?

A.—Yes; no person can lawfully retain or receive for hire or reward more than one infant (or, in case of twins, more than two infants) under the age of one year for the purpose of maintaining such infants apart from their parents for a longer period than twenty-four hours, except in a house which has been registered for the purpose of receiving such children. (35 & 36 Vict. c. 38.)

Endangering Railway Passengers.

Q.—What offence is it to displace sleepers, hide signals, or do other similar acts with intent to injure railway passengers?

A.—By 24 & 25 Vict. c. 100, ss. 32, 33, and 27 & 28 Vict. c. 47, any person doing so is guilty of a felony, with a maximum punishment of penal servitude for life. And any person, by any unlawful act or wilful omission or neglect, endangering or causing to be endangered, or aiding or assisting in endangering, &c., the safety of any person conveyed by or being on a railway, is guilty of a misdemeanor, and liable to imprisonment for two years by sect. 34 of the same act.

Assaults.

Q.—What is a common assault and what a battery?

A.—An assault is an attempt or offer to commit a forcible crime against the person of another; for example, presenting a loaded gun at a person. It will be noticed that there need not be an actual touching of the person assaulted.

A battery is not necessarily a forcible striking with the hand or stick, or the like, but includes every touching or laying hold (however trifling) of another person or his clothes in an angry, revengeful, rude, insolent, or hostile manner; for example, jostling another out of the way. Thus, if a man strikes another with a cane or fist, or throws a bottle at him, if he miss it is an assault, if he hit it is a battery. (Har. Crim. Law, p. 188.)

Q.—Can a civil action in respect of assault be brought at the same time as a criminal prosecution?

A.—Yes; the party injured may either prosecute or bring his action first. The court will not, however, pass judgment during the pendency of a civil action for the same assault, the reason obviously being that otherwise the issue of the civil action might be prejudiced. (*R. v. Mahon*, 4 A. & E. 575.)

Q.—What summary power of conviction is given to magistrates in cases of common assault?

A.—They may dispose of such cases when assembled at petty sessions. The limit of punishment in ordinary cases of such summary conviction is a fine of 5*l.*, or imprisonment not exceeding two months; but in some more serious cases of assault upon females or boys

whose age does not exceed fourteen years, the limits are 20l. and six months. (24 & 25 Vict. c. 100, ss. 42, 43.)

Q.—What power is given by a recent statute to a magistrate of ordering judicial separation on proof of assault by a husband on his wife?

A.—If a husband shall be convicted summarily or otherwise of an aggravated assault upon his wife, the court or magistrate before whom he shall be so convicted may, if satisfied that the future safety of the wife is in peril, order that the wife shall be no longer bound to cohabit with her husband; and such order shall have the force and effect in all respects of a decree of judicial separation on the ground of cruelty, and such order may further provide:

(1.) That the husband shall pay to his wife such weekly sum as the court or magistrate may consider to be in accordance with his means, and with any means which the wife may have for her support, and the payment of any sum of money so ordered shall be enforceable and enforced against the husband in the same manner as the payment of money is enforced under an order of affiliation; and the court or magistrate by whom any such order for payment of money shall be made shall have power from time to time to vary the same, on the application of either the husband or the wife, upon proof that the means of the husband or wife have been altered in amount since the original order or any subsequent order varying it shall have been made.

(2.) That the legal custody of any children of the marriage under the age of ten years shall, in the dis-

cretion of the court or magistrate, be given to the wife.

Provided always, that no order for payment of money by the husband, or for the custody of children by the wife, shall be made in favour of a wife who shall be proved to have committed adultery, unless such adultery has been condoned, and that any order for the payment of money or for the custody of children may be discharged by the court or magistrate by whom such order was made, upon proof that the wife has, since the making thereof, been guilty of adultery; and provided also that all orders made under this section shall be subject to appeal to the Probate, Divorce, and Admiralty Division of the High Court of Justice. (41 Vict. c. 19, s. 4.)

Q.—What defences may be raised upon a charge of assault?

A.—The same facts as would reduce a charge of manslaughter to misadventure would constitute a good defence on an indictment for battery. (Arch. p. 718.) Or it may be shown to have been committed in self-defence, or in a due administration of moderate correction, or in some lawful game, or in the execution of public justice. (Har. Crim. Law, p. 190.)

Q.—What is the penalty when an assault occasions actual bodily harm?

A.—The punishment is penal servitude to the extent of five years for the misdemeanor; actual bodily harm would include any hurt or injury calculated to interfere with the health or comfort of the prosecutor; it need not be an injury of a permanent character (Arch. p. 718); nor need it be an intention

to injure particular persons. Thus, where, before the conclusion of a performance at a theatre, the prisoner intending, and with the result of causing terror to persons leaving the theatre, put out the gas on a staircase, and placed an iron bar across a doorway which they had to pass, thereby causing injury to many who were crushed against it in the panic that ensued, it was held that the prisoner was rightly convicted of inflicting grievous bodily harm. (*R. v. Martin*, 8 Q. B. D. 54.)

Offences against Property.

ARSON.

Q.—What is arson? And can negligence amount to this crime?

A.—Arson is the malicious and wilful burning of the house or outhouse of another man.

Not only the house itself but all outhouses that are parcel of and belonging thereto, though not necessarily under the same roof, as barns and stables, may be the subject of arson. (1 Hale, P. C. p. 567.) Again, the act must be done *wilfully and maliciously*, and, therefore, not mere negligence or accident will constitute the crime; but the malice need not be against the owner of the particular property injured; for instance, if the accused, intending to set fire to the property of A. by accident sets fire to that of B., it is equally arson; and indeed it is not necessary that there should be an intention of firing anyone's house, for if the accused, intending to commit some felony of

an entirely different nature, accidentally sets fire to another's house it is arson. (Har. Crim. Law, p. 277.)

Q.—What punishment may be inflicted for the crime of arson?

A.—It is now provided that whosoever shall unlawfully and maliciously set fire to any dwelling-house, any person being therein, shall be guilty of *felony*, and is liable to penal servitude to the extent of life. (24 & 25 Vict. c. 97, s. 2.)

Q.—What offence is it to set fire to stacks of corn, &c.? and is the punishment the same for firing growing crops?

A.—The offence is a felony, punishable with penal servitude to the extent of life, to wilfully and maliciously set fire to any *stack* of corn, grain, pulse, tares, hay, &c., but the term of penal servitude is limited to fourteen years in the case of firing any *crop* of hay, grass, corn, &c., or to any part of any wood, coppice, or plantation of trees, or to any heath, gorse, furze, or fern, wheresoever the same may be growing. (24 & 25 Vict. c. 97, ss. 16, 17.)

BURGLARY.

Q.—Define burglary; and what are the special incidents of the offence?

A.—Sir Edward Coke defines a burglar as being one who “by night breaketh and entereth into a mansion house with intent to commit a felony.”

From the definition it will appear that there are four things to be considered—*time*, *place*, *manner*, and *intent*.

The *time* must be night; which is deemed, when

considering this crime, to commence at nine in the evening and to conclude at six in the morning of the succeeding day. (24 & 25 Vict. c. 96, s. 1.)

Both the breaking and entering must take place at night; if either be in the daytime it is not burglary.

The *place* must be the mansion house; and must be either the place where one is in the habit of residing or some building between which and the dwelling-house there is a communication, either immediate or by means of a covered or inclosed passage leading from one to another. (24 & 25 Vict. c. 96, s. 53.)

And, further, it must be the house of *another*; therefore a person cannot be indicted for a burglary in his own house, though he breaks and enters the room of his lodger and steals his goods. (Har. Crim. Law, p. 251.)

And the building must be of a permanent nature, not a mere tent or booth, even though the owner reside there.

As to *manner*, there must be both a breaking and entry, but they need not take place at the same time; for if a hole be broken one *night*, and the same breakers enter through it the next *night*, they are burglars. (1 Hale, P. C. 551.) It is necessary that there should be an actual breaking, not a mere legal *clausum fregit*, by leaping over invisible ideal boundaries, but a substantial forcible irruption, as by taking out the glass of or otherwise opening a window, picking or opening a lock with a key, or by lifting up the catch of a door, or unclosing any other fastening the owner has provided. (1 Hale, P. C. 552.)

The breaking may be either *actual* or *constructive*; actual as where an entrance is effected down a

chimney, for that is closed as much as the nature of things will permit, but it is not an actual breaking to enter through an open window or door, nor to raise a window already partly open; but lifting the flap of a cellar which was kept down by its own weight has been decided to be burglary. (*R. v. Russell*, 1 Mood. C. C. 377.)

Constructive, where admission is gained by some device, there being no actual breaking, as to knock at a door and then rush in under pretence of taking lodgings, or to procure a constable to gain admittance to search for traitors and then to bind the constable and rob the house. (4 Bl. 226; Har. Crim. Law, 253.)

The breaking may be after as well as before the offence, for it is now provided that whosoever shall enter the dwelling-house of another with intent to commit any felony therein, or being in such dwelling-house shall commit any felony therein, and shall in either case *break out* of the said dwelling-house *in the night*, shall be deemed guilty of burglary. (24 & 25 Vict. c. 96, s. 51.)

To constitute this crime there must be an *intent* to commit some felony in the dwelling-house, otherwise it is only a trespass. (1 Hale, P. C. 561.)

And the crime is the same, whether such intention be actually carried out, or only demonstrated by some attempt or overt act, for it is burglary whether the felony intended be perpetrated or not.

Q.—What is the punishment for burglary and for entering into a house at night with intent to commit a

felony, or being found at night with any housebreaking instrument with a like intent?

A.—Burglary is a felony, the punishment for which may extend to penal servitude for life. (24 & 25 Vict. c. 96, s. 52.) Further, any person *in any way* entering a dwelling-house in the night with intent to commit a felony is guilty of felony, and liable to penal servitude for seven years (24 & 25 Vict. c. 96, s. 54); and any person found at night armed with any dangerous or offensive weapon or instrument, *with intent* to break or enter any dwelling and to commit a felony therein, or shall be found at night in the possession without lawful excuse of any housebreaking implement, or with his face blackened or disguised with intent to commit a felony, or shall be found at night in any building with intent to commit a felony therein, shall be guilty of a misdemeanor, punishable with penal servitude to the extent of five years. (24 & 25 Vict. c. 96, s. 58.) Or if after a previous conviction for felony, or after a previous conviction for one of such misdemeanors, the penal servitude may be from five to ten years. (24 & 25 Vict. c. 96, s. 59; 27 & 28 Vict. c. 47, s. 2; 42 & 43 Vict. c. 55, s. 1.)

Q.—What is the difference between burglary and housebreaking?

A.—The former can be committed by night only, the latter by day; further, the former is confined to a dwelling-house, the latter extends to other buildings, as school houses, shops, warehouses, &c. Again, the punishment for the latter varies according to whether the felony is actually committed or only an attempt made; in the former case the punishment may be

fourteen years, in the latter seven years' penal servitude.

Q.—What is the offence of sacrilege, and its punishment?

A.—It is the breaking and entering any church, chapel, meeting-house or other place of divine worship and committing any felony therein, or being in such place committing any felony therein, and breaking out of the same. The offence is a felony, and the punishment is penal servitude for life or not less than five years, or imprisonment not exceeding two years with or without hard labour, and with or without solitary confinement. (24 & 25 Vict. c. 96, s. 50.)



Larceny.

Q.—Define larceny.

A.—It is the unlawful taking and carrying away of things personal, with intent to deprive the right owner of the same. (4 Steph. Comm. p. 118.)

Larceny may be either *simple* or *compound*. Simple when unaccompanied with circumstances of aggravation; compound when aggravated in respect of the *nature* of the thing stolen, or in the *manner* of the stealing, or in the *place* from which stolen, or of the *person* by whom stolen.

Q.—A. lends B. a horse, which B. rides away with. Is this larceny? and would the case be different if B. had borrowed the horse with the deliberate intention of stealing it?

A.—As there must be an unlawful taking to ground

a larceny, B. in the first case would not commit a larceny, as A. *lent* him the horse. In the second case it is clearly a larceny, because B. was a person having *animus furandi* at the time he borrowed the animal, which always constitutes a larceny. (4 Steph. Comm. p. 119, and cases there referred to.)

Q.—Must goods be actually taken away to constitute the offence of larceny?

A.—Yes; there must be an actual carrying away as well as a taking to constitute a larceny, "*cepit et asportavit*." But a bare removal from the place in which he found the goods, though the thief does not quite make off with them, is a sufficient asportation. Thus it is a larceny if a man, leading another's horse out of a close, be apprehended in the fact.

Q.—Are corn, grass, trees, and the like, subjects of larceny?

A.—Things that adhere to freehold, as corn, grass, trees, and the like, could not be subjects of larceny by the rules of the common law, but the severance of them was a trespass to be remedied by a civil action for trespass; but now this rule is subject to 24 & 25 Vict. c. 96, which makes all real property likely to be stolen, as fixtures, trees, fences, vegetable productions and minerals, liable to larceny.

Q.—What offence is it to steal vegetables or fruit from a garden?

A.—Whosoever shall steal, or shall destroy or damage with intent to steal, any plant, root, fruit or vegetable production growing in any garden, orchard, pleasure ground, nursery ground, hothouse, greenhouse, or conservatory, shall, on conviction before a justice of the

peace, either be committed to the common gaol or house of correction, to be imprisoned only, or to be imprisoned and kept to hard labour, not exceeding six months, or else shall forfeit and pay above the value of the articles stolen or injury done, not exceeding 20*l.*, and for a second offence shall be guilty of felony and punishable as in case of simple larceny. (24 & 25 Vict. c. 96, s. 36.)

Q.—What punishment may be given for (1) hunting or stealing deer in an *uninclosed* part of any forest? (2) doing the like acts in an *inclosed* forest?

A.—Whosoever shall unlawfully and wilfully course, hunt, snare, or carry away, or kill or wound, or attempt to kill or wound, any deer, kept or being in the *uninclosed* part of any forest, chase or purlieu, shall for every such offence, on conviction before a justice of the peace, forfeit and pay not exceeding 50*l.*, and whosoever having been previously convicted of any offence relating to deer, for which a pecuniary penalty shall have been imposed by this or any former act, shall afterwards commit any of the offences herein-before enumerated shall be guilty of felony. Punishment: at the discretion of the court, imprisonment not exceeding two years, with or without hard labour, and with or without solitary confinement, and if a male under sixteen with or without whipping; or if in the *inclosed* part of any forest, chase, or purlieu, or in any inclosed land where deer shall be usually kept, shall be guilty of felony. Punishment: at the discretion of the court, imprisonment not exceeding two years, with or without hard labour, and with or without solitary confinement, and if a male under sixteen, with or without whipping. (24 & 25 Vict. c. 96, ss. 12, 13.)

Q.—What is the penalty for stealing documents of title?

A.—The punishment as to deeds, &c. is penal servitude for five years, whether the offence be stealing or for any fraudulent purpose destroying, cancelling, obliterating or concealing the same. As to wills, the punishment may be penal servitude for life. (24 & 25 Vict. c. 96, ss. 28, 29. See also 22 & 23 Vict. c. 35, s. 24.)

Q.—What is the offence of killing rabbits in a warren?

A.—Whosoever shall unlawfully and wilfully between the expiration of the first hour after sunset and the beginning of the last hour before sunrise take or kill any hare or rabbit in any warren or ground lawfully used for the breeding or keeping of hares or rabbits, whether inclosed or not, shall be guilty of a misdemeanor; and whosoever shall unlawfully and wilfully at any other time take or kill any hare or rabbit in any such warren or ground, or shall at any time set or use therein any snare or engine for the taking of hares or rabbits, shall, on conviction before a justice of the peace, forfeit and pay not exceeding 5*l*. (24 & 25 Vict. c. 96, s. 17.)

Q.—What is the punishment for dog stealing?

A.—Whosoever shall steal any dog shall, on conviction before two justices of the peace, either be committed to the common gaol or house of correction to be imprisoned, or to be imprisoned and kept to hard labour not exceeding six months, or shall forfeit and pay over and above the value of the said dog not exceeding 20*l*.; and a second offence is a misde-

meanor. Punishment : at the discretion of the court, imprisonment not exceeding eighteen months, with or without hard labour. (24 & 25 Vict. c. 96, s. 18.)

Q.—To what punishment is any person liable for corruptly taking money under the pretence of recovering a stolen dog ?

A.—The offence is a misdemeanor. Punishment : at the discretion of the court, to be imprisoned not exceeding eighteen months, with or without hard labour. (24 & 25 Vict. c. 96, s. 20.)

Q.—Is it a larceny for a servant to take his master's horse without his knowledge, and afterwards return it ?

A.—No. The *cepit et asportavit* must be *animo furandi*, not merely to deprive the owner for a short time but totally, in order to constitute a felony ; otherwise, as in this case, it is only a trespass. (4 Steph. Comm. p. 123.)

Q.—Can a partner be convicted of larceny in respect of the partnership property ?

A.—At common law he could not, for the taking must be of another's goods, but now if any member of a co-partnership, or one or two or more beneficial owners of property, steals any such property, he may be dealt with as if he had not been in such position. (31 & 32 Vict. c. 116, s. 1.)

Q.—Can a husband be guilty of larceny of his wife's property ?

A.—Yes, now he can by virtue of the Married Women's Property Act, 1882, which in effect gives husband and wife redress against the other for larceny ; and by virtue of this act and the Married Women's

Property Act, 1884, either may give evidence against the other in such offences. (45 & 46 Vict. c. 75; 47 & 48 Vict. c. 68.)

Q.—What is the punishment for simple larceny?

A.—Five years, or imprisonment not exceeding two years, with or without hard labour, solitary confinement, and (in the case of a male under sixteen years) whipping (24 & 25 Vict. c. 96, s. 4); but on conviction, after having been twice summarily convicted of any of the offences so punishable under certain acts, or after a conviction for an indictable misdemeanor under 24 & 25 Vict. c. 96, the term of penal servitude may extend to seven years; and in case of conviction after a previous conviction for felony (either on indictment or by way of summary conviction), may be as long as ten years. In certain cases, moreover, where the larceny relates to a subject for which the policy of the law provides with more anxiety, the punishment may be even more severe. For if any person steal (to the value of 10s.) any woollen, linen, hempen or cotton yarn, silk, cotton, &c., whilst laid, placed, or exposed during any stage, process, or progress of manufacture in any building, field, or other place, the term of penal servitude, which may at the discretion of the court be given instead of mere imprisonment, is extended to fourteen years (sect. 62); so, also, whosoever steals a horse, mare, gelding, colt or filly, a bull, cow, ox, heifer or calf, or a ram, ewe, sheep or lamb, is punishable by penal servitude to the extent of fourteen or not less than five years, or by imprisonment, with or without hard labour and solitary confinement, to the extent of two years (sect. 10).

Q.—Has any alteration been made by recent legislation as to stealing various things not the subject of larceny at common law ?

A.—Yes; by the 24 & 25 Vict. c. 96, provision is made against stealing valuable securities, such as bonds, bills, and the like; and it may be laid down in general terms that stealing has now become an offence liable to punishment or penalty in regard to all moveables whatever.

Q.—When does the appropriation of things *found* amount to larceny ?

A.—If a man find goods that have been actually lost, and appropriate them with intent to take the entire dominion over them, really believing when he takes them that the owner cannot be found, it is not larceny; but if he take them with the like intent, though lost, or reasonably supposed to be lost, but reasonably supposing that the owner can be found, it is larceny. (*R. v. Shurborn*, 18 L. J. (M. C.) 140.)

Q.—What is the punishment for larceny in a dwelling-house ?

A.—By 24 & 25 Vict. c. 96, s. 60, it is provided that whosoever shall steal in any dwelling-house any chattel, money, or valuable security to the value of 5*l.* or more, shall be liable to penal servitude for fourteen years or not less than five years, or to be imprisoned, with or without hard labour and solitary confinement, not exceeding two years; and by sect. 61 of the same act the same punishment is awarded to whomsoever shall steal in a dwelling-house any chattel, money, or valuable security, and shall by menace or threat put any one being therein in bodily fear.

Q.—How many distinct acts of stealing may be included in one charge ?

A.—Any number, not exceeding three, which may have been committed against the same person within six months from the first to the last of such acts. (26 & 27 Vict. c. 103, s. 5.)

And further, if the accused be proved to be guilty of embezzlement, though not of larceny, he may be convicted and punished accordingly. (Sect. 72.)

Also, the accused may be tried in any country where he has any of the stolen or feloniously-taken property, without regard to when the crime was committed. (Sect. 114.)

Q.—What is the offence of receiving stolen property ?

A.—It is a felony, where the principal offence is a felony, punishable by fourteen years' penal servitude ; where the principal offence is a misdemeanor, then the punishment may be seven years' penal servitude.

Q.—What is robbery from the person ? A thief takes a purse and then returns it ; of what offence is he guilty ?

A.—It is the unlawful and forcible taking from the person of another of goods or money to any value by violence or putting him in fear.

If the thief having once taken a purse and returns it, still it is a robbery. (*R. v. Peat*, 1 Leach, C. C. 228.)

Q.—What is the punishment for robbery from the person ?

A.—The offence is a felony punishable with penal servitude for fourteen years, or not less than five

years, or to imprisonment, with or without hard labour and solitary confinement, not exceeding two years; and also, if a male, private whipping, once, twice, or thrice, may be added. (24 & 25 Vict. c. 96, s. 40; 26 & 27 Vict. c. 44.)

Q.—What is the offence of sending letters demanding money with threats?

A.—It is a felony punishable with penal servitude to the extent of life, or imprisonment not exceeding two years, with or without hard labour, and with or without solitary confinement. (24 & 25 Vict. c. 96, s. 45.)

Q.—Is it any offence to send letters threatening to accuse the receiver of any infamous crime, with intent to extort money?

A.—Yes; it is a felony punishable with penal servitude for life, or not less than five years, or imprisonment not exceeding two years, with or without hard labour, solitary confinement, and whipping. (24 & 25 Vict. c. 96, s. 46.)



Embezzlement.

Q.—What is embezzlement, and how does it differ from larceny?

A.—Embezzlement is distinguished from larceny as being committed in respect of property which is not at the time in the actual or legal possession of the owner, and consists in the receiving goods, money, &c. under a lawful title, and unlawfully appropriating them; as where a clerk or steward receives money,

&c. for his master and appropriates the same. (4 Steph. Comm. p. 136.)

Q.—An indictment is presented against a person charging him with larceny, but the evidence given proves embezzlement. Can a conviction be made?

A.—By 24 & 25 Vict. c. 96, s. 72, it is enacted that persons indicted for embezzlement shall not be acquitted if the offence shall prove to be larceny, and *vice versa*.

Q.—How many distinct acts of embezzlement may be included in one indictment?

A.—Any number not exceeding three committed within six months from first to last. (24 & 25 Vict. c. 96, s. 71.)

Q.—What must be proved on an indictment for embezzlement?

A.—(1) That the prisoner was a clerk or servant. (2) The receipt for, or in the name of, or on account of, his master. (3) The unlawful appropriation. The jury determines whether the accused is a clerk or servant within the meaning of the Act, the court explaining the essentials of such a position. The receipt is usually proved by the person who paid the money to the prisoner, or by his admission. The unlawful appropriation is usually proved by showing that the prisoner denied the receipt, or accounted for other moneys received but not for the sum in question, or practised some other deceit to evade detection.

Q.—What recent provision has been made by statute as to the trial of a member of a partnership charged with embezzlement?

A.—If a member of a co-partnership, or one of two

or more beneficial owners of any property, shall steal or embezzle the same, he shall be liable to be tried as if not a member of such co-partnership or one of such beneficial owners. (31 & 32 Vict. c. 116.)

Q.—Of what offence is a director of a public company guilty who improperly deals with its property?

A.—It is a misdemeanor with a maximum punishment of seven years' penal servitude for a director or officer of such a company to fraudulently take or apply to his own use any of the property of the company; or, having received some of its property, to fraudulently omit to account therefor, or with a like intent to destroy, alter, mutilate or falsify any book, paper, writing or valuable security belonging to the company; or to circulate any account or statement knowing it to be false in any material particular. (24 & 25 Vict. c. 96, ss. 81, 82, 83, 84.) But it should be noticed that any such director or officer having disclosed upon oath such act in a civil suit *before* the institution of criminal proceedings, is not to be convicted therefor. (*Ibid.* s. 86.)

Q.—To what punishment is any person employed under the post office liable who shall, contrary to his duty, open or procure, or suffer to be opened or wilfully detain or delay or procure, or suffer to be detained or delayed, a post letter, and what crime does he commit?

A.—It is a misdemeanor, punishable by fine or imprisonment, or both, as to the court shall seem meet. (7 Will. IV. & 1 Vict. c. 36, s. 25.)

Q.—To what punishment is a person employed

under the post office liable if he shall embezzle, secrete or destroy a post letter ?

A.—It is a felony, punishable with penal servitude for not more than seven nor less than five years, or imprisonment; and if the letter contain any chattel, money or valuable security, then the term of penal servitude may be for life. (7 Will. IV. & 1 Vict. c. 36.)

Q.—To what punishment is any person liable who shall steal out of a post letter any chattel or money, or valuable security, or shall steal a post letter bag, or a post letter from a post letter bag, or from a post office, or an officer of the post, or a mail, or shall stop a mail with intent to rob or search the same, liable? and what is the offence?

A.—It is a felony; and the offender is liable to be punished in the manner described in the last answer. (7 Will. IV. & 1 Vict. c. 36.)

Q.—What offence is it to receive goods knowing them to have been feloniously stolen?

A.—It is a felony; and the offender is liable to penal servitude to the extent of fourteen years.

Q.—Can a person so receiving stolen property be indicted and convicted either as an accessory after the fact or for a substantive felony, whether the principal felon shall or shall not be amenable to justice?

A.—Yes; by 24 & 25 Vict. c. 96, s. 91.

Q.—If a person who occupies or keeps any lodging, beer or public-house, or place of public entertainment or resort, or any brothel, knowingly lodges or har-

bours therein thieves or reputed thieves, is he liable to punishment?

A.—Yes. By 34 & 35 Vict. c. 112, ss. 10, 11, he shall be liable to a penalty not exceeding 10*l.*, or in default be imprisoned for four months, with or without hard labour, and may be ordered to enter into a recognizance to be of good behaviour.



False Pretences.

Q.—What is the distinction between larceny and false pretences?

A.—“In larceny the owner has no intention to part with his property therein to the person taking it, although he may intend to part with the possession; in false pretences, the owner does intend to part with his property in the money or chattel, but it is obtained from him by fraud.” (Arch. 374.)

Q.—What points must be proved on an indictment for false pretences?

A.—(1) The pretence and its falsity.

(2) That the property or some part thereof was obtained by means of the pretence.

(3) The intent to defraud.

The pretence must be of an *existing fact*, therefore it is not within the act for a person to pretend that he will do something which he does not mean to do; but the promise to do a thing may involve a false pretence that the promisor has the power to do that thing, and for this an indictment will lie. (*R. v. Giles*, 34 L. J. (M. C.) 50; Har. Crim. Law, 243.)

Q.—What is the punishment for obtaining property by false pretences?

A.—The offence is a misdemeanor, punishable by penal servitude to the extent of five years. (24 & 25 Vict. c. 96, s. 86.)

This offence is subject to the Vexatious Indictments Act, 22 & 23 Vict. c. 17.

Q.—What is the offence of false personation?

A.—It is an offence very similar to false pretences, and consists of falsely and deceitfully pretending to be another person; and, by a recent statute, so personating an heir, executor or administrator, wife, widow, next of kin or relation of any person, with intent fraudulently to obtain any land, chattel, money, valuable security or property, is a felony punishable by penal servitude to the extent of life. (37 & 38 Vict. c. 36, s. 1.)



Malicious Mischief.

Q.—What is malicious mischief?

A.—It is such an act as is done, not "*animo furandi*," or with an intent of gaining by another's loss, which is some, though a weak, excuse, but either out of a spirit of wanton cruelty or of black and diabolical revenge. (4 Steph. Comm. p. 145.)

Q.—What is the punishment for destroying or damaging a dwelling-house and other buildings?

A.—By 24 & 25 Vict. c. 97, ss. 9, 10, if by explosion of gunpowder or other explosive substance in a dwelling-house, the dwelling-house is destroyed, and

the life of any person be endangered, it is a felony, punishable with penal servitude for life; if by placing such explosive substance in any building, and no one being inside, with intent to destroy, it is also a felony, punishable with penal servitude for fourteen years. And, by sect. 13, if any tenant of a building unlawfully and maliciously pull it or any part of it down in severing fixtures, he is guilty of a misdemeanor, and liable to the punishment of fine or imprisonment.

Q.—To what punishment is a person liable who commits a malicious injury to a railway, a railway carriage, an engine, a sea bank or wall, a bridge, or a viaduct?

A.—By 24 & 25 Vict. c. 97, to penal servitude for life.

Q.—To what punishment is any person liable who breaks, destroys, or damages with intent to destroy, goods in process of manufacture or machinery, or by force enters any place in order to commit such offence?

A.—It is a felony punishable with penal servitude for life. In the case of machines used in agricultural operations the maximum punishment is penal servitude to the extent of seven years. (24 & 25 Vict. c. 97, ss. 14, 15.)

Q.—Is it necessary to prove in the case of malicious mischief that the defendant was actuated by malice against the owner of the particular property injured?

A.—No, it is not. (24 & 25 Vict. c. 97, s. 58.)

Q.—What are the provisions of the Explosive Substances Act, 1883?

A.—Shortly, they are as follows: Any person who

maliciously causes by an explosive substance any explosion likely to endanger life, or to cause serious injury to property, shall, whether any injury to person or property has been caused or not, be guilty of felony, and is liable to penal servitude for life, or to imprisonment, &c. to the extent of two years; any person so *attempting* to cause injury is guilty of felony, and liable to penal servitude for twenty years; any person making or having in his possession any explosive substance for any purpose other than a lawful one, is guilty of felony, and may be sentenced to penal servitude for fourteen years; and in this latter case the prisoner may call his or her wife or husband to give evidence as in ordinary cases. Accessories are punishable as principals. Preliminary inquiries may be held before a justice of the peace by order of the Attorney-General, and on such inquiry a witness cannot refuse to answer on the ground that he will criminate himself, but be freed from criminal and civil liability therefor (except for perjury), and after such inquiry no further steps are to be taken except by consent of the Attorney-General. (46 Vict. c. 3.)

Q.—Is it a defence if the defendant can show that he was in possession of the property against or in respect of which such act was done; as, for example, if a tailor or carrier wilfully and maliciously destroys goods intrusted to him?

A.—No, it is not. (24 & 25 Vict. c. 97, s. 59.)

Q.—What is it necessary to prove in order to show malicious mischief?

A.—Proof of a general intent to injure or defraud will suffice.

Q.—Is it an offence to kill or wound cattle or other animals? and what is the punishment if it is?

A.—Yes. By 24 & 25 Vict. c. 97, ss. 40, 41, to kill, maim or wound cattle is a felony, punishable with penal servitude not exceeding fourteen years, or imprisonment, &c. And to kill, maim or wound any dog, bird or beast, or other animal not being cattle, but being either the subject of larceny at common law, or being usually kept in confinement, or for any domestic purpose, is punishable summarily, for a first offence by penalty not exceeding 20*l.* above the injury, or imprisonment not exceeding six months, for a second offence by imprisonment for a term not exceeding twelve months. Further, it may be noticed, that to cruelly beat, ill-treat, over-drive, abuse or torture any animal, which includes any domestic animal of any kind or species whatever, and whether quadruped or not, is punishable by a penalty not exceeding 5*l.* (12 & 13 Vict. c. 92, s. 2, and 17 & 18 Vict. c. 60, s. 3.)

Q.—To whom are damages in respect of malicious injury payable where the damage done does not exceed 5*l.*—

- (1) In the case of private property?
- (2) In the case of property of a public nature?

A.—(1) To the person aggrieved.

(2) To the treasurer of the county, borough or place for which the convicting justice acts. (24 & 25 Vict. c. 97, s. 52.)

Q.—If a person trespassing acted under a fair and reasonable supposition that he had a right to commit a malicious injury would he be liable?

A.—No. Nor to any trespass (not being wilful or

malicious) committed in hunting, fishing or pursuit of game. (24 & 25 Vict. c. 97, s. 52.)

Q.—What provision is made by a recent act as to the safety of post office letter boxes?

A.—By the Post Office Protection Act, 1884 (47 & 48 Vict. c. 76), it is enacted that a person shall not place or attempt to place in or against any post office letter box any dangerous, noxious or deleterious substance or fluid, and shall not attempt to do anything likely to injure the box, appurtenances or contents; any person contravening that section is guilty of a misdemeanor, and is liable on summary conviction to a fine not exceeding 10*l.*; and on conviction on indictment to imprisonment with or without hard labour to the extent of twelve months. (Sect. 3.)

Q.—What provision is made against sending by post things likely to cause damage?

A.—By the act last mentioned it is provided that any person sending in a postal packet any explosive, dangerous or deleterious substance, or any living creature or thing whatsoever likely to injure either other postal packages or an officer of the post office, or enclosing in a postal packet any indecent or obscene print or article, or marking anything of the like character on the cover thereof, is guilty of the like offence and liable to punishment as above. (Sect. 4.)

Q.—What other acts are declared offences by the same act?

A.—(1) To affix any placard, advertisement, notice, &c. on any property belonging to or used by or on behalf of the Postmaster-General. (Sect. 5.)

(2) To send without due authority any paper having thereon any words or marks which may imply that the same is sent on her Majesty's service. (Sect. 6.)

(3) To place on any house, wall, &c., without due authority the words "post office," "letter box," or any words or marks which may lead the public to believe that the place is a post office or letter box. (Sect. 8.)

(4) To obstruct an officer of the Post Office when on duty. (Sect. 9.)

The above offences are punishable on summary conviction by fine to the extent of 40s.

(5) To make or sell any fictitious stamp; to have the same or a die or stamp for making the same in his possession.

This offence is punishable by fine to the extent of 20l. on summary conviction on a prosecution by order of the Commissioners of Inland Revenue. (Sect. 7.)

(6) For any person to forge or disclose improperly a telegram, the penalty is fine on summary conviction to the extent of 10l., and on conviction on indictment to imprisonment with or without hard labour to the extent of twelve months; but if the person be in the employ of a telegraph company the fine on summary conviction may extend to 20l., or on conviction on indictment to 200l., or in the latter case imprisonment may be awarded with or without hard labour to the extent of one year. (Sect. 11.)

All offences under the act punishable on summary conviction may be prosecuted and fines recovered in England in manner provided by the Summary Jurisdiction Acts. (Sect. 12.)

Forgery.

Q.—What is forgery?

A.—It is the fraudulent making or alteration of a writing or seal to the prejudice of another man's right, or of a stamp to the prejudice of the revenue. (4 Steph. Comm. p. 149.)

Q.—Is it necessary, as regards writings, that the instrument forged must so far resemble the true instrument as to be capable of deceiving persons who use ordinary observation?

A.—Yes; and it is also decided that any material alteration, however slight, is a forgery as well as an entire fabrication. (*R. v. Collicott*, L. C. 229.)

Q.—If a name forged be a fictitious one, is the party forging liable?

A.—Yes, it is a forgery if done with intention to defraud, and he is liable accordingly. (*R. v. Bontein*, R. & R. C. C. R. 260.)

Q.—What offence is it to forge the great seal of the United Kingdom, the privy seal or any privy signet, the sign manual, the seals of Scotland, or the great seal and privy seal of Ireland, and what is the punishment?

A.—It is a felony, punishable with penal servitude for life or not less than five years, or imprisonment not exceeding two years, with or without hard labour, and with or without solitary confinement. (24 & 25 Vict. c. 98, s. 1.)

Q.—What offence is it and what punishment for fraudulently forging or counterfeiting any trade mark lawfully used by any other person to denote that any

chattel or thing therewith marked is of his own manufacture or merchandise or in respect of which he has any copyright?

A.—It is a misdemeanor, punishable with imprisonment to the extent of two years, with or without hard labour, or fine and imprisonment. (25 & 26 Vict. c. 88.)

Q.—What alteration was made by 33 & 34 Vict. c. 58, in reference to the forgery of stock certificates, &c., issued by the Bank of England in payment of interest of the National Debt?

A.—It was enacted that any person who forged stock certificates or coupons issued by the Bank of England in payment of interest of the National Debt, or the personation of the owners of such stock, should be guilty of a felony and punishable with penal servitude for life or not less than five years, or imprisonment to the extent of two years, with or without hard labour and solitary confinement.

Q.—How may it be proved that a signature to a document is forged?

A.—The most natural evidence would be the denial of the person whose writing it purports to be, and the handwriting may also be proved not to be his by any person acquainted with his handwriting, either from having seen him write or from being in the habit of corresponding with him. And, further, it is provided by the 28 Vict. c. 18, that comparison of a disputed writing with *any* writing proved to the satisfaction of the judge to be genuine may be made by witnesses, and that such writings and the evidence of witnesses concerning the same may be submitted to the court

and jury as evidence of their genuineness or otherwise of the writing in dispute. (See *Har. Crim. Law*, p. 267.)

Q.—How is the intent to defraud to be proved ?

A.—It is not necessary to show an intention to defraud any particular person, a general fraudulent intention being sufficient, but it must be proved that at the time of uttering the accused knew the document to be forged. This, not being capable of direct proof, must be inferred from surrounding facts. Thus, if the accused had uttered other forged instruments and had such in his possession, it would furnish a strong presumption of guilt, and it has been decided that notice may be taken of a subsequent uttering, even though it be the subject of a distinct indictment. (*R. v. Aston*, 2 Russ. p. 732.)

Q.—Can any person refuse, in civil proceedings under the Declaration of Title Act, 1862, to give evidence on the ground that he would criminate himself ?

A.—No ; but such evidence cannot be used against him in subsequent criminal proceedings.

Q.—Can an indictment for forgery be tried at the sessions ?

A.—No, but only at the Central Criminal Court or the assizes. (5 & 6 Vict. c. 38.)

Q.—The crime of forgery is committed in one place and the offender is arrested in another. Where may he be tried ?

A.—He may be dealt with, indicted, tried and punished in any county or place in which he shall be apprehended or be in custody, in the same manner in

all respects as if his offence had been actually committed in that county or place. (24 & 25 Vict. c. 98, s. 41.)

Q.—What is the offence of forging any share or coupon of a duly-registered company or of falsely personating the owner of any shares in such company with intent to defraud ?

A.—In either case it is a felony, and the punishment may be penal servitude for life, or not less than five years, or imprisonment not exceeding two years, with or without hard labour, and with or without solitary confinement. (30 & 31 Vict. c. 131, ss. 34, 35.)

Q.—Of what offence is any clerk guilty who shall, with intent to defraud, destroy, mutilate or falsify any of his employer's books ?

A.—He is guilty of a misdemeanor, and is liable to a maximum punishment of penal servitude for seven years. (38 & 39 Vict. c. 24, s. 1.)

Q.—What is the offence of personating the owner of any stock in the Bank of England with intent to obtain the transfer to him of any such stock ?

A.—It is a felony, and the offender is liable, at the discretion of the court, to penal servitude for life, or not less than (five) years, or imprisonment not exceeding two years, with or without hard labour, and with or without solitary confinement. (24 & 25 Vict. c. 98, s. 3.)

Q.—What is the crime of, and what is the punishment for, forging exchequer bills ?

A.—It is a felony, and the offender is liable to penal servitude not exceeding seven and not less than (five) years, or imprisonment not exceeding two years, with

or without hard labour, and with or without solitary confinement. (*Ibid.* s. 8.)

Q.—What is the punishment for forging bank notes?

A.—Whosoever shall forge, or alter, or shall offer, utter, dispose of, or put off, knowing the same to be forged or altered, any note or bill of exchange of the Governor and Company of the Bank of England or the Bank of Ireland, or of any other body corporate, company, or person carrying on the business of bankers, commonly called a bank note, a bank bill of exchange, or a bank post bill, or any indorsement on, or assignment of, any bank note, bank bill of exchange, or bank post bill, with intent to defraud, shall be guilty of felony. Punishment, at the discretion of the court, penal servitude for life, or not less than (five) years, or imprisonment not exceeding two years, with or without hard labour, and with or without solitary confinement. (*Ibid.* s. 12.)

Q.—Of what crimes is any person guilty who shall forge or utter, or offer, knowing them to be forged, any will, bill of exchange, or order for the delivery of goods?

A.—In all cases it is a felony, and the offender is liable to penal servitude for life, or not less than (five) years, or imprisonment not exceeding two years, with or without hard labour, and with or without solitary confinement. (*Ibid.* ss. 21, 22, 23.)

Q.—What is the offence of defacing, destroying or injuring any register of births, baptisms, marriages, deaths or burials?

A.—It is a felony in all the cases given, and the

punishment is the same as in the last-mentioned answer. (*Ibid.* s. 36.)

Q.—A person is desirous of making a mortgage on land, and, with intent to defraud, conceals an incumbrance affecting the property: of what offence is he guilty?

A.—He is guilty of a misdemeanor, punishable with fine or with imprisonment not exceeding two years (with or without hard labour) or by both. But no prosecution shall be commenced without the sanction of the Attorney-General (or, if that office be vacant, Solicitor-General), nor without previous notice to the person intended to be prosecuted. (4 Steph. Comm. p. 148.)



Offences against Religion.

Q.—What is apostasy?

A.—It is the total renunciation of Christianity, and is an offence which can only take place in such as have once professed the true religion; and it is now provided that any person, educated in the Christian religion, writing, teaching or speaking against it, shall for a first offence be rendered incapable of holding any ecclesiastical, civil or military office; and for the second be rendered incapable of bringing any action or being guardian, executor, legatee or grantee, and shall suffer three years' imprisonment without bail, but if within four months after the first conviction the delinquent will acknowledge his error, he is discharged from disability. (9 & 10 Will. III. c. 35.)

Q.—What is blasphemy?

A.—The offence includes not only the blasphemous libels by one who has been attached to the Christian religion and has apostasized, but also denying, whether orally or by writing, the being or providence of the Almighty, contumacious reproaches of our Lord and Saviour Christ, profane scoffing at the Holy Scriptures or exposing any part thereof to contempt or ridicule. The libel to be blasphemous must consist not in an honest denial of the truths of the Christian religion, but in a wilful intention to pervert, insult or mislead others by means of licentious and contumelious abuse applied to sacred subjects. (*Reg. v. Ramsay*, 48 L. T., N. S. 73; *Har. Crim. Law*, 73.)

Q.—Is blasphemy punishable?

A.—Yes, at common law, by fine and imprisonment, but the law is rarely put in force. (*Har. Crim. Law*, p. 73.)

Q.—Is it an offence to disturb a public worship?

A.—Yes; any person wilfully and maliciously, or contemptuously disturbing any lawful meeting of persons assembled for public worship, or molesting the person officiating, or any of those assembled, upon proof by two or more credible witnesses before a magistrate, must answer for such offence at the sessions, and upon conviction is fined 40*l.* (52 Geo. III. c. 155, s. 12.)

Riotous, violent, or indecent behaviour is also punishable on summary conviction. (23 & 24 Vict. c. 32, s. 2.)

Q.—Is it an offence to profane the Sabbath, and, if so, how is the offence punished?

A.—It is an offence which has been brought into prominence through recent prosecutions.

The statute of Charles II. provides that no person may do any work of his ordinary calling upon the Lord's day, works of necessity and charity only excepted, under penalty of 5s. Nor may anyone expose to sale any wares on penalty of forfeiting his goods, nor may drovers, &c. travel under a penalty of 40s. But no prosecution for such offence may be commenced without the consent of the chief officer of the district, or of two justices, or of a stipendiary magistrate. (29 Car. II. c. 7; 34 & 35 Vict. c. 87; Har. Crim. Law, p. 75.)

Q.—May places of amusement, debate, &c. be kept open on Sunday, admission to which is to be paid for?

A.—No. If they are so kept open they will be deemed disorderly houses, and the keeper fined or imprisoned. (21 Geo. III. c. 49.)

The crown has, however, recently been empowered to remit the penalties. (38 & 39 Vict. c. 80; *Terry v. Brighton Aquarium Co.*, 10 Q. B. 306.)

Q.—What is the punishment for swearing and cursing?

A.—In the case of a labourer, sailor or soldier profanely cursing or swearing the offender is liable to forfeit 1s., and every other person under the degree of a gentleman 2s., and every gentleman or person of superior rank 5s., to the poor of the parish wherein such offence was committed. And on a second conviction shall forfeit double, and for every subsequent

offence treble, the sum first forfeited, with all charges of conviction; and in default of payment shall be sent to the house of correction for ten days. Any justice of the peace may convict upon his own hearing or the testimony of one witness. And any constable may upon his own hearing secure any offender and carry him before a justice and there convict him, but the conviction must be within eight days of the offence. If the justice omits his duty he forfeits 5*l.*, and the constable 40*s.* (4 Steph. Comm. p. 237; 19 Geo. III. c. 21.)

Q.—What is the offence of and punishment for simony? and what is meant by a resignation bond?

A.—Simony properly means the corrupt presentation of any person to an ecclesiastical benefice for money, gift or reward, and several acts of parliament have been passed to restrain the practice. Thus, by the statute 31 Eliz. c. 6, it is provided that if any patron, for money, or reward, or promise of money or reward, shall present a person to any benefice with cure of souls or other ecclesiastical benefice or dignity, not only shall both giver and taker be fined, but such presentation shall be void, and the presentee be rendered incapable of ever enjoying the same benefice, and the crown shall present to it for that turn. But it is, on the other hand, enacted by statute 1 Will. & M. c. 16, that such simoniacal contract shall not prejudice any innocent patron in reversion on pretence of a lapse to the crown or otherwise, unless the presentee or his patron was convicted in the lifetime of such presentee of the offence of simony. Again, by the statute 12 Anne, st. 2, c. 12, if any person, for

money or reward, or promise of money or reward, shall procure the next presentation to any living ecclesiastical, and shall be presented thereupon, this is declared to be a simoniacal contract, and the offender made subject to all the ecclesiastical penalties of simony, is disabled from holding the benefice, and the presentation devolves to the crown. And, by the modern act of 28 & 29 Vict. c. 122, every person instituted or collated to any benefice, or licensed to any perpetual curacy, lectureship, or preachership, must (as we have seen) previously make and subscribe, in addition to the other declarations required by that statute, a declaration that he has not committed simony.

A resignation bond is an agreement to resign a living at a future period, and it is enacted by 9 Geo. IV. c. 94, that a written promise to resign shall be valid if made to the intent (manifested by the terms of it) that some particular nominee or one of two nominees shall be thereupon presented. But this is subject, however, to these provisions—first, that where there are two nominees, each of them shall be, either by blood or marriage, an uncle, son, grandson, brother, nephew, or grandnephew of the patron; secondly, that the writing shall in all cases be deposited within two months after its date with the registrar of the diocese and be open to public inspection; and thirdly, that the resignation made in pursuance of such engagement shall be followed by a presentation within six months of him therein named as the person for whose benefit it is made. (2 Steph. Comm. p. 723.)

Offences against the Peace.

Q.—What is the principal statute relating to riots, and what are its provisions?

A.—The Riot Act (1 Geo. I. st. 2, c. 5), whereby it is enacted generally that if any twelve persons are unlawfully assembled to the disturbance of the peace, and any one justice of the peace, sheriff, under-sheriff, or mayor of a town shall think proper to command them by proclamation to disperse, if they contemn his orders, and continue together for one hour afterwards, such contempt shall be a felony, and the punishment is penal servitude for life, or not less than five years, or imprisonment, with or without hard labour or solitary confinement, for not more than three years.

And further, that if the reading of the proclamation be opposed by force, or the reader be in any way wilfully hindered, such opposers and hinderers and all persons to whom such proclamation ought to have been made, and knowing of such hindrance and not dispersing, are felons, and are liable to the punishment above named. The same act also contains a clause indemnifying the officers and their assistants in case any of the mob be killed in the endeavour to disperse them.

Q.—Within what time must prosecutions under the Riot Act take place?

A.—Within twelve months after the commission of the offence. (Sect. 8.)

Q.—What is the offence of riotously demolishing churches, houses, buildings or machinery, and what is the punishment?

A.—By 24 & 25 Vict. c. 97, if any persons riotously

and tumultuously assembled together to the disturbance of the peace, shall unlawfully and with force demolish, pull down or destroy (or begin to demolish, pull down or destroy), any *church*, chapel, meeting-house or other place of divine worship, or any *house*, stable or other such buildings, engines or machinery, as in the act mentioned, they shall be guilty of felony, and are liable to penal servitude for life, or any term not less than five years, or to be imprisoned, with or without hard labour, for any term not more than two years.

Q.—If the damage does not exceed 30*l.*, have the magistrates any jurisdiction, and if so, what is it?

A.—When the damage caused by the demolition, or attempted demolition, does not exceed 30*l.*, the statute 7 & 8 Geo. IV. c. 31, s. 8, gives instead of an action a summary proceeding before justices at a special petty session.

Q.—What is an affray, and in what manner may persons engaged in one be punished?

A.—An affray is the fighting of two or more persons in some public place to the terror of her Majesty's subjects, for if the fighting be in private, it is no *affray* but an *assault*. Affrays are misdemeanors, and may be suppressed by any private person present, who is justified in endeavouring to part the combatants, whatever consequences may ensue. But more especially the constable, or other similar officer, however denominated, is bound to keep the peace, and to that purpose may break open doors to suppress an affray, or apprehend the affrayers, and may either carry them before a justice, or imprison them by his own authority for a convenient space till the hearing is over. The

punishment of *common* affrays is by fine and imprisonment; the measure of which must be regulated by the circumstances of the case, for where there is any material aggravation the punishment proportionably increases. (4 Steph. Comm. p. 213.)

Q.—Is it an offence to quarrel, chide or brawl in a church, and what punishment may be administered?

A.—It is enacted, by statute 5 & 6 Edw. VI. c. 4, that if any person shall (by words only) quarrel, chide or brawl in a church or churchyard, the ordinary shall suspend him, if a layman, *ab ingressu ecclesiæ*; and if a clerk in holy orders, from the ministration of his office during pleasure; and if any person in such church or churchyard proceeds to smite or lay violent hands upon another, he shall be excommunicated *ipso facto*. (4 Steph. Comm. p. 214; and see 23 & 24 Vict. c. 32.)

Q.—Define a riot, a rout, and an unlawful assembly.

A.—A *riot* seems to be a tumultuous disturbance of the peace by three persons or more assembling together of their own authority, with an intent mutually to assist one another against any who shall oppose them in the execution of some enterprise of a private nature, and afterwards actually executing the same in a violent and turbulent manner to the terror of the people, whether the act intended were of itself lawful or unlawful. A *rout* seems to be a disturbance of the peace by persons assembling together with an intention to do a thing which, if it be executed, will make them riotous, and actually making a motion towards the execution thereof. An *unlawful assembly* seems to consist of any meeting whatsoever of great numbers of people, with such circumstances of terror as cannot but en-

danger the peace and raise fears and jealousies among the subjects of the realm. The punishment of such riots as do not fall within the Riot Act is fine and imprisonment, to which hard labour may be added. The same punishment, but without this addition, attaches to the offences of routs and unlawful assemblies. (4 Steph. Comm. p. 215.)

It should be noticed that a lawful assembly is not rendered unlawful by the knowledge of those taking part in it, that opposition will be raised, which will in all probability give rise to a breach of the peace. (*Beatty v. Gillbanks*, 9 Q. B. D. 308.)

Q.—Who are and are not bound to attend the justices in suppressing a riot, and to what are those who are bound to do so liable?

A.—By statute 13 Hen. IV. c. 7, any two justices, together with the sheriff or under-sheriff of the county, may come with the *posse comitatús* (if need be) and suppress any such riot, assembly or rout, arrest the rioters, and record upon the spot the nature and circumstances of the whole transaction. And, under this statute, it hath been holden that all persons, noblemen and others (except women, clergymen, persons decrepit and infants under fifteen) are bound to attend the justices in suppressing a riot upon pain of fine and imprisonment. (4 Steph. Comm. p. 216.)

Q.—Is it lawful to convene a meeting of more than 50 persons to meet within a mile of Westminster Hall?

A.—It is not lawful for any person to convene, or give notice of convening, any meeting consisting of more than 50 persons, or for any number of persons exceeding the number of 50, to meet in any street,

square or open space in the City or Liberties of Westminster, or County of Middlesex, within a distance of a mile from the gate of Westminster Hall (except such parts of the parish of St. Paul's, Covent Garden, as are within such distance), for the purpose of considering or preparing any petition, complaint, remonstrance, declaration or other address to both or either House of Parliament, on any day on which the same shall meet and sit, or shall be summoned, or adjourned, or prorogued to meet or sit, nor on any day on which the courts shall sit in Westminster Hall. And any such meeting is by the act made an *unlawful assembly*. But there is a provision that the enactment shall not apply to any meeting for the election of members to serve in Parliament, nor to persons attending upon the business of either House of Parliament or any of the said courts. (57 Geo. III. c. 19, s. 23.)

Q.—Is forcible entry or detainer an offence?

A.—Yes; a misdemeanor, punishable by fine and imprisonment. (*R. v. Oakley*, 4 Barn. & Adol. 30; 5 Rich. II. s. 1, c. 7; 4 Steph. Comm. p. 220.)

Q.—What offence is it to spread false news?

A.—It is a misdemeanor, punishable at common law with fine and imprisonment. (4 Steph. Comm. p. 220.)

Q.—Is it an offence to challenge a man to fight, and if so, what is the punishment?

A.—Challenges to fight, either by word or letter, or the bearing of such challenges, are misdemeanors, punishable by fine and imprisonment according to the circumstances of the offence. (*Hawk. P. C. b. i. c. 63, ss. 3, 21.*)

Q.—Define libel.

A.—Libel is a malicious defamation made public, either by printing, writing, signs, pictures or the like, tending either to blacken the memory of one who is dead or the reputation of one who is alive, by exposing him (or his memory) to public hatred, contempt or ridicule. (Har. Crim. Law, p. 111.)

Q.—What remedy has the aggrieved party in case of libel?

A.—Two courses are open: either to prosecute the offender criminally, by indictment or information: or to seek redress by a civil action. This is the general rule, but there are cases where the injured party has a remedy by action, though the wrong-doer is not criminally punishable. The principle is, that whenever an action will lie for a libel, without showing special damage (in other words, where the particular injury to the individual is not the prominent feature, but the incitement to a breach of the peace is) the indictment will also lie. (Har. Crim. Law, p. 112.)

Q.—Is it any defence to an indictment for libel to prove its truth?

A.—It is a clearly-established rule that in a civil action the truth of the matter is a good defence, whereas in a criminal proceeding it does not amount to a defence unless it be proved that it was for the public benefit that the matter should be published. The gist of the crime is the provocation to a breach of the peace, by exciting feelings of revenge, &c. And a libel is not divested of this characteristic on account of its being founded on truth. However, even in a criminal proceeding the truth may be inquired into, and the court, in

pronouncing sentence, may consider whether the guilt of the defendant is aggravated or mitigated by the plea and evidence of the truth. (*Har. Crim. Law*, p. 112.)

Q.—Can the truth of a libel be inquired into before a magistrate?

A.—Until recently the question of the truth of the libel could not be investigated before the magistrate, but only on plea at the trial. (*R. v. Carden*, L. R., 5 Q. B. D. 1.)

But now, by the 44 & 45 Vict. c. 60, evidence may be adduced before a magistrate as to the truth of a libel published in a newspaper, and as to the publication being for the public benefit, and as to the report being fair and accurate and published without malice, and as to any other matter which would be a defence on a trial on indictment.

Further, by the same act, no criminal prosecution is to be commenced for a libel published in a newspaper without the written fiat or allowance of the Director of Public Prosecutions. And a court of summary jurisdiction upon the hearing of such a charge, if of opinion that, though the person charged is guilty, the libel is of a trivial nature, may, with the consent of the accused, deal with the matter summarily and fine the offender to the extent of 50*l.*

Q.—In what cases will an indictment for libel lie?

A.—Whenever the libel is of such a nature that it is actionable without proof of special damage, it is also indictable as a malicious libel; but not otherwise.

The following are instances where no proof of special damage need be given :—

1. Libels which impute the commission of a crime punishable by law.

2. Libels which may have the effect of excluding a person from society ; for example, to say that he has the leprosy.

3. Libels which render another ridiculous or contemptible. But this must be taken with a certain amount of qualification ; for a person will not be indictable for a literary criticism, though it makes the author appear ridiculous, if it does not exceed the limits of a fair and candid criticism, by attacking the personal character of the author.

4. Libels which may impair or hurt his trade or livelihood ; for example, to call a physician a quack. (Har. Crim. Law, p. 113 ; and see Folkard on Slander, 4th ed. p. 586.)

Q.—Can mere spoken words be made the subject of an indictment ?

A.—No ; words spoken, however scurrilous, even though spoken personally to an individual, are not the subject of indictment, unless they directly tend to a breach of the peace ; for example, by inciting to a challenge ; except words seditious, blasphemous, grossly immoral, or uttered to a magistrate while in the execution of his duty. (Har. Crim. Law, p. 115.)

Q.—What is a privileged communication ?

A.—The meaning in law of a privileged communication is, a communication made on such an occasion as rebuts the *prima facie* inference of malice arising from the publication of matter prejudicial to the

character of the plaintiff. But he may answer by proving malice in fact. (*Wright v. Woodgate*, 2 C., M. & R. 573; Har. Crim. Law, p. 114.)

Q.—What must be proved on an indictment for libel?

A.—That the writing is libellous; the making and publishing of the writing. Merely writing or composing a defamatory paper never divulged is no libel; but a slight circumstance will constitute publication, *e. g.* communication, though only to a single person, and although it be contained in a private letter.

Q.—What protection is thrown over proprietors of periodicals in case of libel?

A.—The proprietor in defence may prove that the publication was made without his authority, consent or knowledge, and that the said publication did not arise from want of due care or caution on his part. (6 & 7 Vict. c. 96, s. 7.) Though the statute does not expressly say whether this is a complete defence, or only serves to mitigate punishment, it seems that it will completely rebut the *prima facie* presumption of publication. (Har. Crim. Law, p. 117.)

Q.—What offence is it to publish a libel, and what is the act which refers to it, and what does it enact?

A.—It is a misdemeanor; and, by the provisions of 6 & 7 Vict. c. 96, it is enacted that if any person shall publish, or threaten to publish, any libel, or directly or indirectly propose to abstain from printing or publishing, or offer to prevent the printing or publishing, of any matter touching any person, with intent to extort any money, security for money, or valuable thing from

such person or any other, or with intent to induce any person to confer or procure any appointment or office of profit or trust, he shall be liable to imprisonment, with or without hard labour, for a term not exceeding three years. Also, that if any person shall maliciously publish any defamatory libel, knowing the same to be false, he shall be imprisoned for a term not exceeding two years and pay such fine as the court shall award. And that if any person (though without such knowledge) shall maliciously publish any defamatory libel, he shall be liable to fine or imprisonment, or both, as the court shall award, such imprisonment not to exceed one year. (6 & 7 Vict. c. 96; 8 & 9 Vict. c. 75.)



Offences against the Law of Nations.

Q.—What is the law of nations?

A.—It is a system of rules established by universal consent among the civilized inhabitants of the world in order to decide all disputes, to regulate all ceremonies and civilities, and to insure the observance of justice and good faith in that intercourse which must frequently occur between two or more independent states and the individuals belonging to each; being founded upon this general principle, that different nations ought in time of peace to do to one another all the good they can, and in time of war as little harm as possible without prejudice to their own real interests; and, as none of these states will allow a superiority in the other, therefore neither can dictate or prescribe the rules of this law to the rest, but such rules must necessarily result from those principles of

natural justice in which all the learned of every nation agree and to which all civilized states have assented. (4 Steph. Comm. p. 221.)

Q.—Mention the principal cases in which the statute law of England interposes to aid and enforce the law of nations as a part of the common law.

A.—The principal cases are, in respect of offences, of three kinds: (1) violation of safe conducts; (2) infringement of the right of ambassadors, and (3) piracy; but cases under the first two heads are of very rare occurrence.

Q.—What is the crime of piracy?

A.—The crime of piracy (or robbery and depredation upon the high seas) is an offence against the universal law of society; a pirate being, according to Sir Edward Coke, *hostis humani generis*. And consists in committing those acts of robbery and depredation which, if committed upon land, would have amounted to felony.

Q.—What is the punishment for piracy?

A.—Formerly, the punishment for most piratical offences was death. But it has been thought expedient to relax this severity, and now whoever shall be convicted of piracy is liable to be sentenced to penal servitude for life, or any term not less than five years, or to be imprisoned (with or without hard labour) for any term not more than two years. But whoever with intent to commit, or at the time of, or immediately before or after committing, the crime of piracy, shall assault with intent to murder, or stab, or wound, or unlawfully do any act by which the life of any person

may be endangered, is liable to suffer death as a felon. (4 Steph. Comm. p. 226; 1 Vict. c. 88, ss. 2, 3.)

Q.—Is it an offence to deal in slaves?

A.—By statute 5 Geo. IV. c. 113, it is enacted that, if any British subject, wherever residing, and whether within the dominion of Great Britain or of any foreign country, or in the colonies, shall (except in some particular cases therein specified) within the jurisdiction of the Admiralty knowingly convey, or assist in conveying, persons as slaves, or to be dealt with as slaves, or ship them for that purpose, he shall be deemed guilty of piracy, felony and robbery.

Offences against Trade.

Q.—What is the offence of smuggling?

A.—Smuggling is the importing or exporting either (a) goods without paying the legal duties thereon, or (b) prohibited goods. The 16 & 17 Vict. c. 107, contains chiefly the existing law on the subject, and by it forfeiture of the goods which have in any way been the subject of smuggling practices is declared, certain pecuniary penalties are also imposed, and every person found on board a ship liable to forfeiture by any act relating to the customs may be subjected to imprisonment; and it is a felony for three or more persons to assemble armed for the purpose of aiding in the illegal landing, running or carrying away of prohibited goods, or goods liable to unpaid duties, or to rescue such goods after seizure, or to rescue any person apprehended, or prevent the apprehension of any person for

a felony under that act; the punishment in all these cases is penal servitude from fifteen years to life, or imprisonment not exceeding three years. There are also several minor offences there mentioned, for which the student is referred to the act itself. And, lastly, all proceedings for offences relating to the customs must be commenced within three years from the date of the offence.

Q.—What acts are, by the Debtors Act, 1869, declared to be misdemeanors?

A.—Any person adjudged bankrupt or against whom a receiving order has been made and any person whose affairs are liquidated by arrangement in pursuance of the Bankruptcy Act, 1869, shall, in each of the cases following, be deemed guilty of a misdemeanor, and on conviction thereof shall be liable to be imprisoned for any time not exceeding two years, with or without hard labour, that is to say—

1. If he does not to the best of his knowledge and belief fully and truly discover to the trustee administering his estate for the benefit of his creditors all his property, real and personal, and how, and to whom, and for what consideration, and when he disposed of any part thereof, except such part as has been disposed of in the ordinary way of his trade (if any), or laid out in the ordinary expenses of his family, unless the jury is satisfied that he had no intent to defraud.

2. If he does not deliver up to such trustee, or as he directs, all such part of his real and personal property as is in his custody or under his control, and which he is required by law to deliver up, unless the jury is satisfied that he had no intent to defraud.

3. If he does not deliver up to such trustee, or as he directs, all books, documents, papers and writings in his custody, or under his control, relating to his property or affairs, unless the jury is satisfied that he had no intent to defraud.

4. If, after the presentation of a bankruptcy petition by or against him, or the commencement of the liquidation, or within four months next before such presentation or commencement, he conceals any part of his property to the value of 10% or upwards, or conceals any debt due to or from him, unless the jury is satisfied that he had no intent to defraud.

5. If, after the presentation of a bankruptcy petition by or against him, or the commencement of the liquidation, or within four months next before such presentation or commencement, he fraudulently removes any part of his property of the value of 10% or upwards.

6. If he makes any material omission in any statement relating to his affairs, unless the jury is satisfied that he had no intent to defraud.

7. If, knowing or believing that a false debt has been proved by any person under the bankruptcy or liquidation, he fail for the period of a month to inform such trustee as aforesaid thereof.

8. If, after the presentation of a bankruptcy petition by or against him, or the commencement of the liquidation, he prevents the production of any book, document, paper or writing affecting or relating to his property or affairs, unless the jury is satisfied that he had no intent to conceal the state of his affairs or to defeat the law.

9. If, after the presentation of a bankruptcy petition by or against him, or the commencement of the liqui-

dation, or within four months next before such presentation or commencement, he conceals, destroys, mutilates or falsifies, or is privy to the concealment, destruction, mutilation or falsification of any book or document affecting or relating to his property or affairs, unless the jury is satisfied that he had no intent to conceal the state of his affairs or to defeat the law.

10. If, after the presentation of a bankruptcy petition by or against him, or the commencement of the liquidation, or within four months next before such presentation or commencement, he makes, or is privy to the making, of any false entry in any book or document affecting or relating to his property or affairs, unless the jury is satisfied that he had no intent to conceal the state of his affairs or to defeat the law.

11. If, after the presentation of a bankruptcy petition by or against him, or the commencement of the liquidation, or within four months next before such presentation or commencement, he fraudulently parts with, alters or makes any omission, or is privy to the fraudulent parting with, altering or making any omission in, any document affecting or relating to his property or affairs.

12. If, after the presentation of a bankruptcy petition by or against him, or the commencement of the liquidation, or at any meeting of his creditors, within four months next before such presentation or commencement, he attempts to account for any part of his property by fictitious losses or expenses.

13. If, within four months next before the presentation of a bankruptcy petition by or against him, or the commencement of the liquidation, he, by any

false representation or other fraud, has obtained any property on credit and has not paid for the same.

14. If, within four months next before the presentation of a bankruptcy petition by or against him, or the commencement of the liquidation, he, being a trader, obtains, under the false pretence of carrying on business and dealing in the ordinary way of his trade, any property on credit, and has not paid for the same, unless the jury is satisfied that he had no intent to defraud.

15. If, within four months next before the presentation of a bankruptcy petition by or against him, or the commencement of the liquidation, he, being a trader, pawns, pledges, or disposes of, otherwise than in the ordinary way of his trade, any property which he has obtained on credit, and has not paid for, unless the jury is satisfied that he had no intent to defraud.

16. If he is guilty of any false representation or other fraud for the purpose of obtaining the consent of his creditors or any of them to any agreement with reference to his affairs or his bankruptcy or liquidation. (Sect. 11; 46 & 47 Vict. c. 52, s. 163.)

Q.—What offence is by the Bankruptcy Act, 1883, added to the above list?

A.—Where an undischarged bankrupt under this act obtains credit to the extent of 20*l.* or upwards from any person without informing such person that he is an undischarged bankrupt, he shall be guilty of misdemeanor, and may be dealt with and punished as if he had been guilty of a misdemeanor under the Debtors Act, 1869, and the provisions of that act shall apply to proceedings under this section. (46 & 47 Vict. c. 52, s. 31.)

Q.—What is the one case of felony under the Debtors Act, 1869 ?

A.—If any person who is adjudged a bankrupt or has his affairs liquidated by arrangement, after the presentation of a bankruptcy petition by or against him, or the commencement of the liquidation, or within four months before such presentation or commencement, quits England and takes with him, or attempts or makes preparation for quitting England and for taking with him, any part of his property to the amount of *twenty pounds* or upwards, which ought by law to be divided amongst his creditors, he shall (unless the jury is satisfied that he had no intent to defraud) be guilty of *felony*, punishable with imprisonment for a time not exceeding two years, with or without hard labour. (Sect. 12 ; 46 & 47 Vict. c. 52, s. 163.)

Q.—Of what offence is any person guilty who, in incurring a debt, obtains credit by false pretences, or who, with intent to defraud his creditor, has made any gift or delivery of his property within two months of any unsatisfied judgment ?

A.—In each case he is deemed guilty of a misdemeanor, and, on conviction thereof, shall be liable to be imprisoned for any time not exceeding one year, with or without hard labour. (Sect. 13.)

Q.—Of what offence is any creditor guilty who, with intent to defraud, makes a false claim ?

A.—He is guilty of a misdemeanor, punishable with imprisonment for any time not exceeding one year, with or without hard labour. (Sect. 14.)

Q.—Is there any restriction put upon prosecution for these offences?

A.—Yes; all the above-mentioned offences come within the provisions of the Vexatious Indictments Act, the terms of which must be complied with; and, when any person is charged with any such offence before any justice or justices, such justice or justices shall take into consideration any evidence adduced before him or them tending to show that the act charged was not committed with a guilty intent. (Sect. 18.)

Q.—What direction is given by the Debtors Act on the trustee reporting that a bankrupt has been guilty of an offence under that act?

A.—Where an official receiver or a trustee in any bankruptcy reports to any court exercising jurisdiction in bankruptcy that in his opinion a bankrupt has been guilty of any offence under this act, or where the court is satisfied upon the representation of any creditor or member of the committee for inspection that there is ground to believe that the bankrupt has been guilty of any offence under this act, the court shall, if it appears to the court that there is a reasonable probability that the bankrupt may be convicted, order the trustee to prosecute the bankrupt for such offence. (Sect. 16.)

And in such cases the Director of Public Prosecutions is to institute and carry on the prosecution. (46 & 47 Vict. c. 52; 47 & 48 Vict. c. 58.) Further it should be noted that the provisions of the Debtors Act, 1869, as to offences by bankrupts shall apply to any person whether a trader or not in respect of whose estate a “receiving order” has been made as if the term “bankrupt” in that act included a person in

respect of whose estate a receiving order had been made. (46 & 47 Vict. c. 52, s. 163.)

Q.—What power has the court of ordering the arrest of a debtor?

A.—(1.) If after a bankruptcy notice has been issued or petition in bankruptcy is presented by or against such debtor it appear to the court that there is probable reason for believing he is about to abscond with a view of avoiding payment of the debt or service of the petition, or of avoiding examination in respect of his affairs, or otherwise delaying or embarrassing the proceedings in bankruptcy.

(2.) If after a petition in bankruptcy has been presented by or against such debtor, it appears to the court that there is probable cause for believing he is about to remove his goods or chattels with a view of preventing or delaying such goods or chattels being taken possession of by the official receiver or the trustee, or that there is probable ground for believing that he has concealed or is about to conceal or destroy any of his goods or chattels, or any books, documents or writings which may be of use to his creditors in the course of his bankruptcy.

(3.) If after the service of the petition on such debtor, or after a receiving order is made against him, he remove any goods or chattels in his possession above the value of five pounds, without the leave of the official receiver or trustee, or if without good cause shown he fails to attend any examination ordered by the court. (46 & 47 Vict. c. 53, s. 25.)

Q.—What is the offence of forging or counterfeiting trade marks?

A.—It is a misdemeanor, and punishable with im-

prisonment to the extent of two years, or by fine, or both; additions to and alterations of trade marks, with intent to defraud, as well as fresh fabrications, are deemed forgeries, but no proceedings are to be taken after three years from the offence or one from the first discovery. (25 & 26 Vict. c. 88.)

Q.—Is a member of a trade union liable to prosecution for a conspiracy to restrain trade?

A.—No; this is provided for by the 34 & 35 Vict. c. 31, which declares that no trade union shall be deemed to be unlawful merely because the purposes are in restraint of trade, so as to render any member thereof liable to prosecution for conspiracy or otherwise.

(See also 38 & 39 Vict. c. 86.)

But a contract by several master manufacturers to close their mills at the will of the majority with the object of increasing prices cannot be enforced. (*Hilton v. Eckersley*, 6 E. & B. 47.)

Q.—What are the chief offences mentioned in the Conspiracy and Protection of Property Act, 1875?

A.—1. For any person—with a view to compel any other person to abstain from doing, or to do any act which such other person has a right to do or abstain from doing—to wrongfully and without authority

(a) Use violence to or intimidate such other person, or his wife, or children, or injure his property.

(b) Persistently follow him about from place to place.

(c) Hide his tools, clothes or other property, or hinder him in the use thereof.

(d) Watch or beset his house or other place where

he resides, or works, or carries on business or happens to be, or the approach thereto, but not if the object be merely to obtain or communicate information.

(e) Follow him with two or more persons in a disorderly manner, in or through any street or road.

2. For a person employed by the municipal authorities, public companies or others, who have undertaken to supply gas or water, wilfully and maliciously to break his contract of service, knowing or having reasonable cause to believe that the probable consequence will be to deprive the inhabitants wholly, or to a great extent of gas or water.

3. For a person wilfully and maliciously to break his contract of service, knowing or having reason to believe that the probable consequence will be to endanger human life, or cause bodily injury, or expose valuable property to destruction or serious injury.

All the above-mentioned acts are punishable on summary conviction or indictment by imprisonment not exceeding three months, or penalty not exceeding 20*l*. (Har. Crim. Law, pp. 127 *et seq.*)

Q.—Is there, in prosecutions for the last two-mentioned offences, any exception to the general rule as to the admission of evidence in criminal cases?

A.—Yes; the respective parties to the contract of service, their husbands or wives, are competent witnesses. And it may also be here mentioned that the accused in such last-mentioned cases may elect to have the case tried on indictment, and not by a court of summary jurisdiction. (38 & 39 Vict. c. 86, ss. 9, 11.)

Offences against Justice.

Q.—What is the offence of stealing or injuring records, and its punishment?

A.—It is a felony, punishable with penal servitude to the extent of five years, or imprisonment for not more than two years, with or without hard labour and solitary confinement. (24 & 25 Vict. c. 96, s. 30.)

Q.—What is the punishment for striking or assaulting any person in a court of justice?

A.—The punishment is the loss of the right hand, imprisonment for life, and forfeiture of goods and chattels and of the profits of the offender's lands during life.

Q.—Is it any offence to intimidate any of the parties or witnesses in a court of justice?

A.—Yes; these are all impediments to justice, and are high misprisions and contempts of the king's courts, and are punishable with fine and imprisonment.

Q.—What is meant by escape, prison breach, and a rescue?

A.—An escape is where the liberation of any party is effected by himself or others without force; where it is effected by the party himself with force, it is called prison breaking; where it is effected by others with force, it is commonly called a rescue. (Har. Crim. Law, p. 77.)

Q.—What is the punishment for aiding prisoners to escape?

A.—By 25 Geo. II. c. 37, s. 9, it is a felony to rescue or aid a prisoner in escaping, if he be found

guilty of murder, or going to or during examination ; and the punishment is penal servitude for life, or not less than five years, or to imprisonment, with or without hard labour and solitary confinement, for not more than two years.

By 52 Geo. III. c. 156, every person assisting a prisoner of war to escape shall be guilty of a felony, and he may be sentenced as just mentioned.

By 1 & 2 Geo. IV. c. 88, s. 1, the rescuer of any person charged with felony is declared guilty of felony and he may be sentenced to penal servitude for not more than seven, not less than five years ; or to imprisonment, with or without hard labour, for not less than one, nor more than three years.

By 5 Geo. IV. c. 84, whoever shall rescue, or attempt to rescue, any offender under sentence or order of penal servitude from the custody of any person charged with his removal, shall be guilty of felony, and he may be sentenced to penal servitude for life, and previous imprisonment, with or without hard labour not exceeding four years, or to imprisonment with or without hard labour not exceeding two years.

Q.—Of what offence is a convict guilty who is at large without authority ?

A.—It is a felony punishable by penal servitude to the extent of life, and previous imprisonment not exceeding four years, or else by imprisonment not exceeding two years. (5 Geo. IV. c. 84 ; 4 & 5 Will. IV. c. 67.)

Q.—What offence is it to prevent or obstruct an arrest ?

A.—An assault upon, obstruction of or resistance to

a peace officer when executing his duty is a misdemeanor with a penalty of imprisonment to the extent of two years. (24 & 25 Vict. c. 100, s. 38.)

Further, refusing to aid a peace officer is a misdemeanor at common law. (*R. v. Brown*, C. & M. 314.)

Q.—What is meant by compounding a felony? and what is misprision of felony?

A.—Compounding a felony is the taking of a reward for forbearing to prosecute a felony; and one species of this offence is where a party robbed takes back his goods again, or other amends, upon agreement not to prosecute.

Misprision of felony is the concealment of some felony, not being treason (the misprision of which has been before considered), committed by another; but without such previous concert with, or subsequent assistance of, him as will make the party concealing an accessory before or after the fact. (4 Steph. Comm. p. 272.)

Q.—What is common barratry?

A.—It is the offence of *frequently* inciting and stirring up suits and quarrels between her Majesty's subjects, either at law or otherwise. (4 Bl. 134.)

Q.—What are the offences of champerty and maintenance?

A.—Maintenance is an officious intermeddling in a suit that in no way belongs to one, by maintaining or assisting either party with money or otherwise to prosecute or defend it.

Champerty (*campi partitio*) is a bargain with a

plaintiff or defendant (*campum partire*) to divide land or other matter sued for if he shall prevail at law, whereupon the champetor is to carry on the party's suit at his own expense. (4 Steph. Comm. p. 275; Har. Crim. Law, 97.)

Q.—What is the crime of conspiracy? husband and wife, and a third party, are indicted for this offence, and the third party is acquitted: can the husband and wife be convicted?

A.—Conspiracy may be correctly described in general as a combination or agreement between *two or more* persons to carry into effect a purpose hurtful to some individual, or to particular classes of the community, or to the public at large, though this is subject to an exception in the case where the purpose is a felonious one and actually accomplished: the offence of conspiracy (which is a misdemeanor only) being then merged in the felony. (4 Steph. Comm. p. 277.)

The husband and wife cannot be convicted for conspiracy alone, because in law they are one person, and there must be two for conspiracy. (Arch. Cr. Pl. 942, 17th ed.)

Further, on an indictment against two persons jointly for conspiracy, they must both, if tried together, be either convicted or acquitted; and where one only was convicted, and the jury, being unable to agree as to the other, were discharged from giving a verdict, a new trial was granted as to both. (*Reg. v. Manning and another*, 51 L. T., N. S. 121.)

Q.—Define perjury.

A.—Perjury is said to be a crime committed when

a lawful oath is ministered by any that hath authority to any person in any judicial proceeding who sweareth absolutely and falsely in a matter material to the issue or cause in question. (4 Steph. Comm. p. 280; *R. v. Brown*, C. & M. 314.)

Q.—What is subornation of perjury?

A.—It is the offence of procuring another to take such a false oath as constitutes perjury in the principal. (4 Steph. Comm. p. 281.)

Q.—What steps must be taken before a bill of indictment for perjury can be laid before the grand jury?

A.—This offence being one of those covered by the Vexatious Indictments Act, it is necessary that—

(a) The prosecutor or other person presenting such indictment must be bound by recognizance to prosecute or give evidence against the accused.

(b) The accused has been committed to or detained in custody, or has been bound by recognizance to appear to answer an indictment for such offence.

(c) The indictment has been preferred by the direction, or with the consent in writing, of a judge of the High Court, or the Attorney or Solicitor-General of England, if the offence has been committed in England, or of a judge of one of the Superior Courts of law in Dublin, or the Attorney or Solicitor-General of Ireland, if the offence has been committed in Ireland.

(d) In case of an indictment for perjury by the direction of any court, judge or public functionary authorized by 14 & 15 Vict. c. 100, to direct a prosecution for perjury. (22 & 23 Vict. c. 17.)

Q.—Can a conviction for perjury be made on the testimony of a single witness?

A.—No; two witnesses at least must contradict what the accused has sworn, or at any rate, one must so contradict and other evidence must materially corroborate that contradiction. But this rule does not apply when the perjury consists in the defendant having contradicted what he swore on a former occasion; in this case, the testimony of a single witness in support of the defendant's own original statement will suffice. (*Har. Crim. Law*, p. 85; *R. v. Knill*, 5 B. & Ald. 929.)

Q.—What is the punishment for perjury?

A.—Penal servitude to the extent of seven years, or imprisonment to the same extent. (2 Geo. II. c. 25, s. 2.)

Q.—What acts are declared to be corrupt practices, by a candidate or his agent, when contesting a seat in parliament?

A.—(1.) To directly or indirectly, by himself or by any other person on his behalf, give, lend or agree to give or lend, or offer, promise, or promise to procure, or to endeavour to procure, any money or valuable consideration to or for any voter, or to or for any person on behalf of any voter, or to or for any other person, in order to induce any voter to vote, or refrain from voting, or to corruptly do any such act as aforesaid, on account of such voter having voted or refrained from voting at any election.

(2.) To give, &c. any office, place or employment under the same circumstances.

(3.) To do any of the things mentioned above in order to induce the person benefited to procure, or

endeavour to procure, the return of any person or any vote.

(4.) The act of the person so procuring, &c.

(5.) To pay, &c. money with the intent that it shall be expended in bribery, or knowingly to pay it in discharge of what has been so expended.

In addition to these there are other offences created by the Act of 1883 cited below, viz. :—

(6.) Treating and undue influence as defined by the act. (Sects. 1 and 2.)

(7.) Personation as defined by 35 & 36 Vict. c. 33.

(8.) Illegal practices. (Sect. 7.)

The commission of any corrupt practice other than personation is a misdemeanor, punishable with imprisonment not exceeding one year or by fine not exceeding 200*l*. (Sect. 6.)

Personation is a felony, punishable by imprisonment not exceeding two years with hard labour. (Sect. 6.)

An illegal practice is punishable on summary conviction by a fine not exceeding 100*l*. (Sect. 10; 17 & 18 Vict. c. 102; and 46 & 47 Vict. c. 51.)

It should be noted that by the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, the above provisions and those next following are in the main applied to municipal elections. (47 & 48 Vict. c. 70.)

Q.—What is bribery on the part of the voter ?

A.—(1.) Directly or indirectly to receive, agree or contract for any money, loan or valuable consideration for voting or agreeing to vote, or for refraining or agreeing to refrain from voting, at any election. (17 & 18 Vict. c. 102, s. 3.)

(2.) To receive any money or valuable consideration

on account of having voted or refrained from voting, or having induced any person so to do.

A voter may also be guilty of an illegal practice, which consists of—

(3.) Voting or inducing or procuring any person to vote at an election with the knowledge that such person is prohibited from voting. (Sect. 9.) Knowingly publishing a false statement of the withdrawal of a candidate at an election for the purpose of promoting or procuring the election of another. (Sect. 6.)

All proceedings on the above offences must be commenced within a year from the commission of the offence, or within three months after the report by election commissioners is made, the enquiry being commenced within one year after the offence is committed. (Sect. 51.)

Further, any candidate guilty of a corrupt practice shall never sit in parliament for the same constituency; and if committed by his agent, he is incapacitated for sitting for the same constituency for seven years; if the offence has been committed by the voter, he cannot be elected to parliament for seven years, or vote or hold any public or judicial office. (46 & 47 Vict. c. 51, ss. 4—6, 11.)

Q.—What is the offence of contempt of court, and what courts have power to fine and imprison?

A.—A contempt of court is a disobedience to the rules, orders, process or dignity of a court, which has power to punish such offences.

It is only courts of record that have power to fine and imprison for contempt of their authority.

Contempts are of two kinds:—

(1) *Direct*, “which openly insult or resist the powers

of the courts, or the persons of the judges who preside there."

(2) *Consequential*, "which without such gross insolence or direct opposition plainly tend to create an universal disregard of their authority."

And these may be again divided into—

- (a) Those committed in the court itself; for example, by persistently applauding during a trial, or any other wilful disturbance.
- (b) Those committed out of court; for example, by tampering with witnesses, jurors, &c.

Q.—What proceedings may be taken on contempt of court?

A.—(1) If the contempt be committed in face of the court, the offender may without examination or further proof be apprehended and imprisoned.

(2) If the contempt be committed out of court, the judge might formerly make a rule calling upon the party suspected to show cause why an attachment should not issue against him; or in flagrant cases the attachment might issue in the first instance. (Har. Crim. Law, p. 105.)

But now no motion for a rule *nisi* or order to show cause shall be made for attachment, but the person charged is to be served with notice of motion in the first instance.



Offences against Public Health, &c.

Q.—Define bigamy.

A.—This offence consists in marrying a second time while the defendant has a former husband or wife still

living. Not only is the second marriage void, but it is a felony, even if the second marriage took place out of the United Kingdom.

Q.—Mention some cases in which the second marriage is not felonious.

A.—By 24 & 25 Vict. c. 100, s. 57, it is provided that it shall not be bigamy (1) if the second marriage is contracted elsewhere than in England and Ireland, by any other than a subject of her Majesty, or (2) to any person marrying a second time whose husband or wife shall have been continually absent from such person for seven years, and shall not have been known by such person to be living within that time, or (3) shall extend to any person who at the time of such marriage shall have been divorced from the bond of the first marriage, or (4) to any person whose former marriage shall have been declared void by any court of competent jurisdiction. In these cases the second marriage is a mere nullity.

Q.—What is the punishment for bigamy?

A.—Penal servitude not exceeding seven years, or not less than five years, or imprisonment not exceeding two years, with or without hard labour. (24 & 25 Vict. c. 100, s. 57.)

Q.—What is the offence of betting or wagering in any street or public place?

A.—By 5 Geo. IV. c. 83, the player is subject as a rogue and vagabond to the punishments therein mentioned (*vide post*, p. 133), or else at the discretion of the magistrate to a penalty not exceeding 40*s.* for the first offence, and 5*l.* for any subsequent offence.

It has recently been decided that a railway carriage

is a public place. (*Langrish v. Archer*, 47 L. T. 548; 10 Q. B. D. 44.)

Q.—What is the punishment for keeping a gaming house?

A.—An early statute prohibited the keeping of any common house for dice, cards or other unlawful games, under penalty of 40s. for every day, and 6s. 8d. for every time of playing. (33 Hen. VIII. c. 9, s. 11.)

By the 8 & 9 Vict. c. 109, amended by 17 & 18 Vict. c. 38, the statute of Hen. VIII. is repealed as far as it prohibited bowling, tennis or other games of mere skill. Further provision was also made by the act of this reign against those who own or keep common gaming houses. The owner or keeper and every person having the care and management of such house, and also every banker, croupier and other person in any manner conducting or assisting in conducting the business of the house, is liable, on conviction before two justices, to a penalty not exceeding 500*l.*, in addition to the penalty under 33 Hen. VIII., or may be committed to prison for a period not exceeding six months under 8 & 9 Vict. c. 109, s. 4.

Betting-houses, rooms, places or offices are within this statute. Persons receiving deposits on bets in such houses are liable to forfeit 30*l.*, or imprisonment not exceeding three months, and the same penalty attaches to advertising betting-houses, or exhibiting placards or handbills relating thereto, or imprisonment not exceeding two months. (16 & 17 Vict. c. 119.) A wooden box in “the ring” is a betting-place. (*Galloway v. Maries*, 45 L. T. 763.) Gaming-house offences are

within the Vexatious Indictments Act. Under a recent case it has been decided that the game of baccarat being a game of cards other than a game of mere skill is an unlawful game, and a club a common gaming-house, and that the proprietor and committee-men were guilty accordingly, but that the players, from mere membership and playing in the club, were not guilty of "assisting in conducting the business" of the house. (*Jenks and others v. Turpin and others*, 50 L. T. 808.)

Q.—What inducement is held out to persons concerned in the gaming to come forward and give evidence?

A.—If such a person is examined as a witness, and makes to the best of his knowledge a full disclosure of the facts, he is entitled to receive a certificate, and is free from the consequences of his unlawful act up to that time. (8 & 9 Vict. c. 109, s. 9.)

Q.—What is meant by a common, and what by a private, nuisance?

A.—Common nuisances are such annoyances as are liable to affect all persons who come within the range of their operation. They consist of acts either of commission or of omission, that is, causing something to be done which annoys the community generally, or neglecting to do something which the common good requires. Public nuisances are opposed to private nuisances, which annoy particular individuals only, that is, to which all persons are not liable to be exposed. It is for the jury to determine whether a sufficiently large number of persons are or may be affected, so as to make the nuisance "common" or

“public.” (Har. Crim. Law, p. 140; *R. v. White*, 1 Burr. 333.)

Q.—Are common nuisances actionable at common law?

A.—Not as a general rule; but if any one person can prove special damage, he may pursue his civil remedy and claim damages.

Q.—A person carries on a noxious trade outside a town, and subsequently buildings and houses are erected near his manufactory. Can the new-comers indict him for creating a nuisance?

A.—No; in such a case the trade may be continued. (*R. v. Cross*, 2 C. & P. 483.) And, further, a person cannot be indicted for setting up a noxious manufacture in a neighbourhood in which such offensive pursuits have long been borne with, unless the inconvenience to the public is greatly increased. (*R. v. Neil*, 2 C. & P. 485.)

Q.—Is it a crime to burn a dead body?

A.—It has been decided in the recent case of *Reg. v. Price* (12 Q. B. D. 247) that to burn a dead body instead of burying it is not a misdemeanor unless it is so done as to amount to a public nuisance.

But it should be noted that if the body be burnt with intent thereby to prevent the holding upon such body of an intended coroner's inquest, and so obstruct a coroner in the execution of his duty in a case where the inquest is one which the coroner has jurisdiction to hold, then it is a misdemeanor. (*Reg. v. Stevenson*, 13 Q. B. D. 331.)

Q.—What is the law as to lotteries?

A.—By stat. 10 & 11 Will. III. c. 17, all lotteries

are declared to be public nuisances: and all patents, grants and licences for the same to be contrary to law; but this does not apply to art unions, which are legalized by 9 & 10 Vict. c. 48, for the disposal of works of art by way of prizes.

Q.—What is the offence of mixing or adulterating any article of food? and what is the principal act on the subject?

A.—The act referred to is the Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), and it is thereby provided that no person shall mix, colour, stain or powder (or permit any other person so to do) any article of food with any ingredient or material, so as to render the article injurious to health, with intent that the same may be sold in that state, and no person shall sell any such article under a penalty in each case not exceeding 50*l.* for the first offence: every offence after a conviction for a first offence shall be a misdemeanor, for which the person on conviction shall be imprisoned for a period not exceeding six months with hard labour. (Sect. 3.)

Q.—What is the punishment for selling, to the prejudice of the purchaser, articles of food which is not of the nature demanded?

A.—The offender is liable to a penalty not exceeding 20*l.*, provided that no such offence is deemed to be committed in the following cases—

1. Where any matter or ingredient, not injurious to health, has been added to the food or drug, because the same is required for the production or preparation thereof as an article of commerce in a state fit for carriage or consumption, and not fraudulently to in-

crease the bulk, weight or measure of the food or drug, or conceal the inferior quality thereof.

2. Where the drug or food is a proprietary medicine, or is the subject of a patent in force, and is supplied in the state required by the specification of the patent.

3. Where the food or drug is compounded as mentioned in the act.

4. Where the food or drug is unavoidably mixed with some extraneous matter in the process of collection or preparation. (*Ibid.* s. 6.)

Q.—What power is given by the above act of obtaining an analysis of articles purchased?

A.—*Any purchaser* of an article of food or of a drug may, on paying the fees therein mentioned, require an analyst appointed under that or any other act to analyse the same and to furnish him with a certificate of the analysis; and any officer duly appointed may of his own accord procure a sample of food or drugs and submit the same to analysis as above mentioned. (*Ibid.* ss. 12, 13.)

Q.—How is the purchaser to deal with the sample so bought?

A.—He must forthwith notify to the seller his intention to have the same analysed, and must offer to divide the article into three parts, to be then and there separated, and each part to be marked and sealed, or fastened up in such manner as its nature will permit, and shall deliver one of the parts to the seller, and shall retain one part for future comparison, and submit the third part to the analyst. (*Ibid.* s. 14.)

Q.—Is it any defence to a prosecution under the

above-mentioned act for the defendant to prove he bought the goods with a warranty?

A.—Yes; if he can prove that on purchasing the goods he had a written warranty that they were of the required nature, and that he sold them in the same state as when purchased; but he will be liable to pay the costs of the prosecution unless he gave notice that he intended to rely on that defence. (*Ibid.* s. 25.)

Q.—What is the principal provision of the Sale of Food and Drugs Act Amendment Act, 1879 (42 & 43 Vict. c. 30)?

A.—In any prosecution for selling *to the prejudice of the purchaser* any article of food or any drug which is not of the nature, substance and quality of the article demanded by such purchaser, it shall be no defence to any such prosecution to allege that the purchaser, having bought only for analysis, was not prejudiced by such sale. Neither is it any defence to prove that the article in question, though defective in nature, *or* in substance, *or* in quality, was not defective in all three respects. (Sect. 2.)

Q.—What restriction is put by statute upon vivisection?

A.—By the Cruelty to Animals Act, 1876 (39 & 40 Vict. c. 77), it is provided that a person shall not perform on a living animal any experiment calculated to give pain, under a penalty of 50*l.* for a first offence, and 100*l.* for a second or imprisonment for three months, except as follows: the experiment must be performed with a view to the advancement of physiological knowledge, or of knowledge which will be useful for saving or prolonging life or alleviating

suffering; the experiment must be performed by a person holding a licence from the Secretary of State; the animal must, during the whole of the experiment, be under the influence of some anæsthetic of sufficient power to prevent the feeling of pain, and must, if seriously injured or likely to suffer pain, be killed before it recovers from the effects thereof.

Q.—What is the punishment for furious driving?

A.—At the discretion of the court imprisonment not exceeding two years, with or without hard labour. (24 & 25 Vict. c. 100, s. 35.)

Q.—Into what classes may vagrants be divided? and mention several instances of each class and their punishments.

A.—They may be divided into—

- (1.) Idle and disorderly persons.
- (2.) Rogues and vagabonds.
- (3.) Incurrible rogues.

Idle and disorderly Persons.—This class consists of such as become chargeable to the parish though able to work. Those returning to a parish from which they have been removed. Prostitutes behaving in public places in a riotous or indecent manner, &c.

The punishment on conviction before a magistrate is imprisonment not exceeding one month. (5 Geo. IV. c. 83, s. 3.)

Rogues and Vagabonds.—Within this description fall those who a second time commit any of the before-mentioned offences, and also those who commit the following acts:—Telling fortunes and publicly exposing obscene prints, &c., publicly exposing their person, collecting alms or contributions under false pre-

tences, running away and leaving a wife or children chargeable on the parish, making violent resistance when apprehended by a peace officer as an idle and disorderly person, provided there be a conviction.

Suspected or reputed thieves visiting public places with intent to commit a felony.

The punishment awarded by the magistrate is imprisonment not exceeding three months. In this case, and that of imprisonment as an idle and disorderly person, there is an appeal to the sessions. (5 Geo. IV. c. 83.)

Incorrigible Rogues are those who are convicted a second time of an act which makes the doer a rogue and vagabond, and also the following:—Escaping out of a place of confinement before the expiration of the time for which they were committed under this act; making violent resistance when apprehended by a peace officer as a rogue and vagabond, if subsequently convicted of the offence for which they were apprehended.

The magistrate may commit a person convicted as an incorrigible rogue to hard labour in the house of correction until the next sessions; by that court he may be imprisoned for a period not exceeding one year, with or without whipping if a male. (5 Geo. IV. c. 83, s. 5; and see Har. Crim. Law, pp. 145 *et seq.*)

Q.—What is the punishment for drunkenness?

A.—The mere fact of drunkenness is punishable by a forfeiture of 5s. for the first offence; for the second offence the offender may be bound with two sureties in 10l. for good behaviour. (4 Jac. I. c. 5; 21 Jac. I. c. 7, s. 3.)

Persons found drunk in any street or public thoroughfare, building or other place, or on any licensed premises, are liable to a penalty of 10*s.* for the first offence, 20*s.* and 40*s.* for the second and third time within twelve months.

If whilst drunk a person is guilty of riotous or disorderly behaviour, or is in charge of any carriage, horse, cattle or steam-engine, or is in possession of any loaded fire-arms, the penalty is 40*s.* or imprisonment for one month. (35 & 36 Vict. c. 94, s. 12.)

Q.—What is the offence of concealing a birth?

A.—By 24 & 25 Vict. c. 100, it is enacted that if a woman be delivered of a child, every person who shall by any secret disposition of the dead body of such child (whether such child died before or after its birth) endeavour to conceal the birth, shall be guilty of a misdemeanor and be liable to be imprisoned, with or without hard labour, for any term not exceeding two years.

Q.—What is the punishment for taking up dead bodies for the purpose of dissection?

A.—It is a misdemeanor at common law, punishable with fine and imprisonment.

Q.—What is the offence of poaching by night?

A.—By the 9 Geo. IV. c. 69, and 7 & 8 Vict. c. 29, it is provided that if any person shall by night unlawfully take or destroy any game or rabbits on any land (whether open or enclosed), or on any public road, highway or path, or the sides thereof, or at the openings, outlets or gates from any such lands into such roads, or shall *by night* be in such places with any gun, net, engine or other instrument for the purpose of

taking or destroying game, he shall be liable to imprisonment, for the first offence, for any period not exceeding three months with hard labour, and, at the expiration of such period, to be bound over to his good behaviour by sureties for a year, or, in default of such recognizance, to be further imprisoned for six months or until such sureties are found; for a second offence such person shall be liable to imprisonment for six months, and then to be bound in sureties for two years, and, in default thereof, to be further imprisoned for one year or until such sureties are found. And if he shall offend a third time he is guilty of a misdemeanor, and he is then liable to penal servitude for not more than seven or to be imprisoned with hard labour for any time not exceeding two years. It is moreover provided that when any person shall be found committing such offence it shall be lawful for the owner or occupier of the land, or for any person having a right of free warren or free chase therein, or for the lord of the manor, or for the gamekeeper or servant of such persons, or their assistants, to seize or apprehend any person so offending; and, in case he shall assault or offer violence with an offensive weapon towards any person so authorized to apprehend him, he is guilty of a misdemeanor, and he is in that case liable to penal servitude for not more than seven nor less than five years, or to be imprisoned with hard labour for any term not exceeding two years.

The *night*, for the purposes of this provision, is deemed to commence at the expiration of one hour after sunset and to conclude at the beginning of the last hour before sunrise.

Q.—What is the punishment for three or more

persons being armed to trespass at night in search of game?

A.—It is a misdemeanor, punishable with penal servitude for not more than fourteen years, and not less than five years, or with imprisonment with hard labour for not more than two years. (9 Geo. IV. c. 69, s. 9.)

If the offence be punishable summarily, the prosecution must be commenced within six months after the act, if otherwise than by summary conviction, then within twelve months. (*Ibid.* s. 4.)

Prevention of Crimes.

Q.—What means are generally employed for the prevention of crime?

A.—The means of prevention chiefly consists in obliging those persons whom there is probable cause to suspect of future misbehaviour, to stipulate with and give full assurance to the public that such offence as is apprehended shall not happen, and that is effected by their finding pledges or security for keeping the peace, or for their good behaviour.

Q.—In what form is security to keep the peace or for good behaviour usually given?

A.—In the form of a recognizance or obligation to the Crown, and taken in some court, or by some judicial officer, whereby the party bound acknowledges himself to be indebted to the Crown in the sum required, with condition to be void and of none effect if he shall appear in court on such a day, and in the meantime shall keep the peace either generally towards the

Sovereign and all his liege people, or particularly also with regard to the person who craves the security ; or the condition of the recognizance may be to keep the peace for a certain period, not dependent on any appearance in court.

Or if it be for good behaviour, then on condition that the party bound shall demean and behave himself well, or be of good behaviour either generally or specially for the time therein limited ; and if the condition of such recognizance be broken by any breach of the peace in the one case, or by any misbehaviour in the other, the recognizance becomes forfeited or absolute, and the party or his sureties become the Crown's absolute debtors for the several sums in which they are respectively bound. (4 Steph. Comm. p. 288.)

Q.—By whom may this security be demanded, and who may be bound ?

A.—By any justice of the peace, and by certain persons who are regarded as conservators of the peace : for example, the judges of the Queen's Bench Division, the coroner, sheriff, &c., or it may be granted at the request of any subject on due cause shown. If the justice is averse to act, it may be obtained by a mandatory writ called a *supplicavit*, which will compel the justice to act as a ministerial and not as a judicial officer, and he must make a return of such writ under his hand and seal specifying his compliance. But this writ is seldom used, for when application is made to the superior courts, they usually take the recognizance there, under the direction of the statute 21 Jac. I. c. 8.

All persons under the degree of nobility may be bound over either by a justice or at quarter sessions ;

husbands may be required to give security at the instance of their wives, and *vice versa*; infants may require security, and be compelled to give it, by their next friend.

Q.—What difference is there in the proceedings when security is granted (a) by a justice out of sessions, (b) at the sessions?

A.—(a) If no sessions are sitting, the person requiring immediate security goes before a justice and on oath makes his complaint, which is usually, though not necessarily, in writing. If the person complained of be present, he may be required at once to enter into the required recognizance; but if not present, the magistrate issues a warrant to bring him before himself or some other magistrate. If the delinquent refuses to go before the magistrate, he may be put in prison without any further warrant. When he comes before the magistrate he must offer sureties, or else he may be committed to prison for a term not exceeding twelve months. (16 & 17 Vict. c. 30, s. 3.) The form of the recognizance is chiefly in the discretion of the magistrate, both as to the number and sufficiency of the sureties, the amount of the sum and the period during which the party is to be bound.

(b) By the sessions, application is made by the party requiring security to the sessions. It should be made upon articles verified on oath showing the facts to warrant it. If the party refuses, or is not prepared to enter into the recognizance, he may be committed. (Har. Crim. Law, p. 290.)

Q.—On what grounds may security to keep the peace be granted?

A.—Any justice may *ex officio* bind by recognizance

all who in his presence make any affray or threaten to kill or beat one another, or who contend together with hot and angry words, or go about with unusual weapons or attendance to the terror of the people; also all such as he knows to be common barrators, and such as break the peace.

Also, where any private man fears another will burn his house, or kill, imprison or beat him, and every justice is bound to grant such surety, if he who demands it swears that he is under fear of death or bodily harm, and, further, that he does not require such surety out of malice or pure vexation.

Q.—How does security to be of good behaviour differ from security to keep the peace?

A.—The former includes security for the peace and something more, and a magistrate may bind over to good behaviour all them that *be not of good fame*, which will include not only those who act *contra pacem*, but also those who act *contra bonos mores*, as for haunting bawdy houses with women of ill-fame, night walkers, eavesdroppers, drunkards, vagabonds, &c.

Note.—Provisions having the object of the prevention of the repetition or the commission of crimes, are contained in an “Act for the more Effectual Prevention of Crime” (34 & 35 Vict. c. 112), and have reference chiefly to convicts holding *licences* under the Penal Servitude Acts, the better *identification* of criminals, and the punishment of persons *twice convicted* of crime, but are not considered of sufficient importance for the student for insertion here.

PART II.
PROCEDURE.

Courts of Criminal Jurisdiction.

Q.—Give a list of courts exercising criminal jurisdiction.

A.—The High Court of Parliament, the Court of the Lord High Steward, the Court of Queen's Bench, the High Court of Admiralty, the Courts of Oyer and Terminer and Gaol Delivery, the Central Criminal Court, the Police Courts of London, the Quarter Sessions, and Petty Sessions.

The preliminary inquiry into indictable offences may be before one justice only, who may discharge the accused or commit for trial.

Q.—Which is the highest court in England, and what are its functions?

A.—The High Court of Parliament is the supreme court of the kingdom, not only for the making, but also for the execution of laws by the trial of great offenders, whether lords or commoners, in the method of parliamentary impeachment. The judicial jurisdiction of the court is exercised in two methods:—

(1.) By indictment.

(2.) By impeachment.

By indictment before the lords. By this method

are tried peers and peeresses against whom a true bill for treason or felony, or misprision of either offence, has been found by the grand jury, the indictment being removed to the House of Peers by writ of *certiorari*.

By impeachment by the commons before the lords. The prosecution is undertaken by the commons as representing the people; the lords are the judges. The proceedings are shortly as follows:—the accused is charged with the offence by a member of the House of Commons, who moves that he be impeached; if this be agreed to, the member proceeds to the bar of the House of Lords, and impeaches the offender in the name of the House of Commons, and the Commons of the United Kingdom. Articles of impeachment are drawn up by a committee, and delivered to the lords, answer is made to the accusation, and a day appointed for the trial; the accused, unless admitted to bail, being retained in custody. The trial usually takes place in Westminster Hall; in case of a peer being indicted for treason under the presidency of a Lord High Steward specially appointed; but in other cases before the Lord High Chancellor. The peers, as a body, are the judges both of law and fact, the president having only a vote in right of his peerage; evidence is adduced, and then the president puts the question to each peer in succession, beginning with the junior baron, whether the accused be guilty or not guilty, upon each article separately. The peers, rising in their places, standing uncovered, and laying their right hands upon their breast, answer “guilty” or “not guilty upon my honour;” the president gives his opinion last, and when the numbers

are ascertained he declares them. Judgment is then pronounced by the president on the demand of the commons. (May, 660 ; 4 Steph. Com. p. 296 ; Har. Crim. Law, pp. 296 *et seq.*)

Q.—What is the province of the Court of the Lord High Steward.

A.—It is a court instituted for the trial, during the *recess* of parliament, of peers or peeresses indicted for *treason or felony, or for misprision of either* ; it is only in case the offence be of this description that the privilege of being so tried exists ; for, if of any other kind, the peer must be tried in the court in which the indictment is found. The Lord High Steward is not merely president, he is judge of law and fact, and, therefore, has no vote.

By 7 Will. III. c. 3, upon all trials of peers or peeresses for treason or misprision of treason, all the peers who have a right to sit and vote in Parliament shall be summoned at least twenty days before such trial, to appear and vote therein ; and every lord appearing and taking the proper oaths shall vote in such trial. The decision is by a majority ; but a majority cannot convict unless it consist of twelve or more. (Kelynge, 56.)

Q.—What are the functions of the Queen's Bench Division on the Crown side ?

A.—It takes cognizance of all criminal causes—from treason down to the most trivial misdemeanor or breach of the peace. Its jurisdiction consists of two branches—original and transferred—but the former is very rarely exercised ; the transferred jurisdiction, however, is more extensive, thus, indictments from

inferior courts may be removed there by writ of *certiorari*; but it is now provided that such removal shall not take place (unless it be an indictment against a body corporate not authorized to appear by attorney in the court below, or unless it be at the instance of the Attorney-General acting on behalf of the Crown) until it is made clear to the Queen's Bench Division by the party applying for the writ that (a) a fair and impartial trial cannot be had in the court below; (b) that a question of law of more than usual difficulty and importance is likely to arise upon the trial; or (c) that a view of the premises, or a special jury, may be required for the satisfactory trial of the case. (16 & 17 Vict. c. 30.)

Q.—How are offences coming within the province of the Admiralty Court to be tried?

A.—There is power under the 28 Hen. VIII. of trying by commission all treasons, felonies, murders, robberies and confederacies on the sea within the jurisdiction of the Admiralty; but this is never done in practice: for, by the 4 & 5 Will. IV. c. 36, which first established the Central Criminal Court, the judge of the Admiralty was placed among the judges of the new court, and it was provided that under any commission of oyer and terminer and gaol delivery to be issued under that act, such judges, or any two of them, might hear and determine any offences committed or alleged to be committed on the high seas or other places within the jurisdiction of the Admiralty. Further, in each of the statutes 24 & 25 Vict. cc. 96, 97, 98, 99 & 100, is contained a clause to the effect that all indictable offences mentioned in those acts,

committed within the jurisdiction of the Admiralty, shall be deemed to be offences of the same nature, and liable to the same punishment, as if committed upon the land, and may be dealt with and tried in any place in which the offender shall be apprehended or be in custody.

The criminal jurisdiction of the Admiralty extends over offences committed by *British subjects* or *others on British ships*—

- (1) In all great waters frequented by ships ;
- (2) In all creeks, harbours, ports, &c. in foreign countries.

And in the case of persons other than British subjects, it is in consequence of *Reg. v. Keyn* (2 Ex. D. 63), by the 41 & 42 Vict. c. 73, extended to all offences committed within one marine league of the coast, measured from low-water.

Q.—What are the courts of oyer and terminer and general gaol delivery ? and by virtue of what commissions do the judges sit ?

A.—These are courts more popularly known by the name of assizes, which sit periodically in every county in the kingdom. The assizes are now held four times a year for the trial of prisoners, and for this purpose the country is divided into circuits, over which the judges travel, holding courts at various towns.

The judges sit by virtue of four several commissions :—

- (1) The commission of the peace ;
- (2) The commission of oyer and terminer ;
- (3) The commission of general gaol delivery ;
- (4) The commission of nisi prius.

The commission of the *peace* empowers justices to conserve the peace, and thereby gives them all the power of the ancient conservators of the common law in suppressing riots and affrays, in taking securities for the peace, and in apprehending felons and other inferior criminals. It also empowers any two or more of the justices named therein to hear and determine all felonies and other offences, which is the ground of their jurisdiction at quarter sessions.

The commission of *oyer and terminer* gives the judges authority to hear and determine all treasons, felonies and misdemeanors committed within the county. This is directed to the judges and several others, or any two of them; but only the judges or serjeants-at-law, the Queen's counsel and barristers, with a patent of precedence named in the commissions, are of the *quorum*, so that the rest cannot act without the presence of one of them. Under the commission of *oyer and terminer*, persons may be tried whether they are in gaol or at large; but the words are "inquire, hear and determine," so that by virtue of this commission the judges can only proceed upon an indictment found at the same assizes: for they must first inquire by means of the grand jury or inquest before they are empowered to hear and determine by the help of the petit jury.

The commission of *general gaol delivery*, in addition, empowers them to try and deliver every prisoner who shall be in the gaol when they arrive at the circuit town, whenever or before whomsoever indicted, or for whatever crime committed. (4 Steph. Comm. p. 311.)

The commission of *nisi prius* is principally of a civil

nature, and empowers the judges to try all questions of fact issuing out of the courts at Westminster that are then ripe for trial by jury. These were, by the ancient course of the courts, usually appointed to be tried at Westminster by a jury returned from the county wherein the cause of action arose; but with this proviso, *nisi prius*, *unless before* the day prefixed, the judges of assize should come into the county in question.

By the effect of the Common Law Procedure Act, 1852 (15 & 16 Vict. c. 76), the course of proceedings in civil causes was made no longer connected with the proviso of *nisi prius*, but the trial was to take place without the use of any such words in the process of the court and as a matter of course before the judges sent under the commission into the several counties. (4 Steph. Comm. p. 311.)

Q.—When was the Central Criminal Court established? and over what district has it power?

A.—This court was established in 1834 by the 4 & 5 Will. IV. c. 36, for the trial of treasons, felonies and misdemeanors committed within the city of London and county of Middlesex, and certain specified parts of Essex, Kent and Surrey. The authorities of the judges are the commissions of oyer and terminer and general gaol delivery, and the sessions of the court are held at least twelve times a year, and oftener if necessary, the dates being fixed each year by the judges.

Q.—Who are the judges of the Central Criminal Court?

A.—The commissioners or judges of the court are

the Lord Mayor, Lord Chancellor or Lord Keeper, the judges of the High Court (except those who were not in office and not liable before the commencement of the Judicature Act), the Dean of the Arches, the Aldermen of London, the Recorder and Common Serjeant of London, the judge of the City of London Court, any person who has been Lord Chancellor, Lord Keeper, or a judge of the High Court, and such others as the Crown from time to time may appoint. Usually at each session the Recorder and Common Serjeant, and, if the numbers of the prisoners require it, the judge of the City of London Court, sit on ~~the~~ first two days, after which they are joined by the Westminster judges on the rota, who come down to try the more serious cases. On the bench there is always either the Lord Mayor or one of the aldermen, who lends the dignity of his presence to the proceedings, but does not take any active part therein. (Har. Crim. Law, p. 307.)

Q.—What is the court of quarter sessions, and how is it composed?

A.—It is a court that must be held in every county once in every quarter of a year; and by statute 11 Geo. IV. & 1 Will. IV. c. 70, s. 35, the quarter sessions are appointed to be held in the first week after the 11th day of October, the first week after the 28th day of December, the first week after the 31st day of March, and the first week after the 24th day of June. This court is held before two or more justices of the peace, one of whom must be of the *quorum*.

Q.—What is meant by being of the *quorum*?

A.—The commission of the peace appoints all justices

jointly and severally to keep the peace in the particular county named, and any two or more of them to inquire of and determine felonies and other misdemeanors in such county committed, in which number some particular justices, or one of them, are directed to be always included, and no business to be done without their presence, the words of the commission running thus: *quorum aliquem vestrum*, A. B., C. D., &c., *unum esse volumus*, whence the persons so named are usually called justices of the *quorum*. And formerly it was customary to appoint only a select number of justices, eminent for their skill and discretion, to be of the *quorum*; but now the practice is to advance almost all of them to that dignity, naming them all over again in the *quorum* clause, except, perhaps, only some one inconsiderable person for the sake of propriety; and no exception is now allowable for not expressing in the form of the warrants, &c. that the justice who issued them is in the *quorum*. (2 Steph. Comm. p. 646.)

Q.—What offences cannot be tried at quarter sessions?

A.—It is expressly provided by statute that the justices of any county shall not at any general or quarter sessions try any prisoner for treason, murder, or capital felony, nor for any felony which, when committed by a person not previously convicted of felony, is punishable with penal servitude for life.

Nor for (1.) Misprision of treason. (2.) Offences against the Queen's title, prerogative or government, or against either House of Parliament. (3.) Offences subject to the penalties of *præmunire*. (4.) Blasphemy

and offences against religion. (5.) Administering or taking unlawful oaths. (6.) Perjury and subornation of perjury. (7.) Making or suborning false oaths, &c., punishable as perjuries or misdemeanors. (8.) Forgery. (9.) Maliciously firing corn, grain, &c.; wood, trees, &c.; or heath, gorse, &c. (10.) Bigamy, and offences against the laws relating to marriage. (11.) Abduction of women and girls. (12.) Concealing births. (13.) Seditious, blasphemous or defamatory libels. (14.) Bribery. (15.) Unlawful combinations and conspiracies, with certain exceptions. (16.) Stealing, &c. records, &c. (17.) Stealing, &c. bills, &c., and written documents relating to real estate. (5 & 6 Vict. c. 38.)

But by the express provision of the Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 20, altering the former law, all offences against the bankrupt laws may now be tried at the quarter sessions.

Justices at quarter sessions are also restrained from trying persons charged with fraudulent practices, as *agents, trustees, bankers or factors* under the Larceny Act of 1861. Neither can they try any newly-created offence without express power given them by the statute which creates it. But there are many offences and particular matters which, by particular statutes, belong properly to this jurisdiction, and ought to be prosecuted in this court, as the smaller misdemeanors and felonies, and especially offences relating to game, highways, ale-houses, bastard children, the settlement and provision for the poor, servants' wages and apprentices. Some of these are proceeded upon by indictment, others by way of *appeal* from the orders or convictions of justices out of sessions, and others in a summary way by motion and order thereupon. (4 Steph. Comm. p. 315.)

Q.—How is a court of petty sessions constituted?

A.—Two or more justices sitting in a petty sessional court-house, or the Lord Mayor or any of the Aldermen of the City of London, or any police or stipendiary magistrate sitting in a court-house, where he has the usual power of two justices, constitute “a petty sessional court.”

Q.—What is the difference between a petty sessions and a special sessions?

A.—A petty sessions is a bench of magistrates formed by the periodical meetings of the justices of the peace of boroughs, or of counties, ridings or divisions within certain recognized districts. A special sessions, or a special petty sessions, as it is sometimes termed by statute, is a meeting of the justices of a division of a county or riding, or of a borough, called for a particular purpose.

Q.—How is a coroner chosen, and what are the functions of the coroner's court?

A.—The office of the coroner is a very ancient one at the common law. He is called coroner, *coronator*, because he hath principally to do with pleas of the Crown, or such wherein the sovereign is more immediately concerned. And in this light, the Lord Chief Justice of the Queen's Bench is the principal coroner in the kingdom, and may (if he pleases) exercise the jurisdiction of a coroner in any part of the realm. The coroner is chosen by the freeholders, at a county court held for that purpose. The coroner is chosen for life, but may be removed by being made sheriff, which is an office incompatible with the other, or by a writ *de coronatore exonerando*, for a cause to be therein assigned, as that he

is engaged in other business, is incapacitated by years or sickness, hath not a sufficient estate in the county, or lives in an inconvenient part of it. And by 25 Geo. II. c. 29, and 23 & 24 Vict. c. 116, s. 6, extortion, neglect, inability or misbehaviour are also made causes of removal.

The office and power of a coroner are either judicial or ministerial, but principally *judicial*; this is in great measure ascertained by statute 4 Edward 1, *De officio coronatoris*, and consists first and principally in inquiring, when any person is slain, or dies suddenly, or in prison, concerning the manner of his death. When such a death happens, it is the duty of the township to give notice of it to the coroner; upon which he is to issue a precept to the constables of the four, five or six next townships, to return a competent number of good and lawful men to appear before him at such a place to make an inquisition concerning the matter. This inquisition must be held before the coroner or presiding officer, and the court held before him on this occasion is a court of record. The jury, who must consist of twelve at least, are to be sworn and charged by the coroner, to inquire how the party came by his death. The inquisition must be had *super visum corporis*, for if the body be not found, the coroner cannot sit, except by virtue of a special commission issued for the purpose. Upon this inquisition, the coroner and jury must hear such evidence as is offered either on the part of the Crown, or of any party suspected, and it is to be given upon oath. By 6 & 7 Will. IV. c. 89, it is moreover provided, that whenever it shall appear to the coroner that the deceased was attended at his death or during his last illness by any legally

qualified medical practitioner, he may order his attendance as a witness at the inquest, and where the deceased was not so attended, the attendance of any legally qualified medical practitioner, being at the time in actual practice in or near the place where the death happened. He may also direct the performance of a *post mortem* examination, with or without an analysis of the contents of the stomach or intestines; provided, however, that if a sworn statement be made to him of the belief of the party sworn, that the death was caused entirely or in part by the improper or negligent treatment of any person, such person shall not be allowed to perform or assist at the *post mortem* examination. It is also enacted, that when it shall appear to the majority of the jury that the cause of the death has not been satisfactorily explained by the witnesses in the first instance, they may name to the coroner in writing any other legally qualified practitioner or practitioners, and require their attendances as witnesses, or for the performance of a *post mortem* examination, whether one shall have been previously performed or not. And further, that all such medical witnesses shall be allowed remuneration for their attendance and trouble, and on the other hand shall forfeit 5*l.* for every neglect to obey an order for their attendance, with a proviso, however, that in case of death in any hospital, infirmary, or lunatic asylum, no remuneration shall be allowed to any person whose duty it was to attend the deceased as a medical officer of the institution. The verdict must be found with the concurrence of at least twelve of the jury, and provisions are made by 6 & 7 Vict. c. 83, to prevent the inquisition from being quashed on account of merely technical defects.

Q.—Has a coroner power to admit to bail in cases of murder?

A.—No. If any person be found guilty of murder or other homicide, the coroner is to commit him to prison for further trial, and he must certify the inquisition under his own seal and the seals of the jurors, together with the evidence thereon, to the Queen's Bench, or the next assizes. But by 22 Vict. c. 33, if on the inquiry before the coroner a verdict of manslaughter against any person shall be found, the coroner may at his discretion accept sufficient bail for the person so charged for his appearance to take his trial at the next assize and general goal delivery for the county.

Q.—What are the duties of a coroner as to an inquest after an execution?

A.—By 31 Vict. c. 24, the coroner of the jurisdiction to which the prison belongs, wherein judgment of death is executed on any offender, is expressly required to hold an inquest on the body within twenty-four hours after the execution, and to inquire thereat into and ascertain the identity of the body, and whether the judgment was duly executed on the offender, and it is directed that at such inquest neither any officer of the prison nor any prisoner confined therein shall be a juror.

Q.—How are the expenses of an inquest before the coroner to be borne?

Q.—They are payable out of the county or borough rate, according to a scale settled by the justices at quarter sessions. (See 7 Will. IV. & 1 Vict. c. 68.)

Summary Convictions.

Q.—What is meant by a summary conviction?

A.—By a *summary* proceeding is meant principally such as is directed by several Acts of Parliament (for the common law is a stranger to it, unless in the case of contempts) for the conviction of offenders and the infliction of certain penalties created by those acts. In a summary proceeding there is no intervention of a jury, but the party accused is acquitted or condemned according to the opinion of such person as the statute has appointed for his judge. An institution designed professedly for the greater ease of the subject by doing him speedy justice, and by not harassing the freeholders with frequent and troublesome attendances to try every minute offence. (4 Steph. Comm. p. 326.)

Q.—What power of summary punishment is there for non-payment of excise duties?

A.—By 43 Geo. III. c. 99, s. 33, a person commanded by the commissioners of taxes to pay duties may, if there be no sufficient distress on his premises, be committed to prison by two district commissioners of taxes without bail or mainprize till payment be made.

Q.—Mention some offences which may be tried summarily.

A.—Stealing or killing with intent to steal any bird, beast, or other domestic or confined animal, not the subject of larceny at the common law, killing or wounding forest deer, killing dogs or other animals (not being cattle), either the subject of larceny at common law or ordinarily kept confined, stealing (or

having in possession stolen) dogs, stealing fences, taking fish, killing hares or rabbits, doing certain malicious injuries to property, receiving certain kinds of property knowing it to have been stolen, injuring, &c. electric or magnetic telegraphs, and injuring or stealing trees or vegetable productions in gardens. (See 24 & 25 Vict. cc. 96 and 97.)

Q.—What power is given to justices of dealing with assaults?

A.—By 24 & 25 Vict. c. 100, s. 42, when any person shall unlawfully assault or beat another, two justices of the peace, upon complaint from the party aggrieved, may hear and determine the offence, and may commit the offender to prison, with or without hard labour, for any period not exceeding two months, or else fine him to the extent of 5*l.*, and in default of payment imprison him to the extent above mentioned. When the assault or battery is made on a male child, whose age, in the opinion of such justices, shall not exceed fourteen years, or upon any female, the punishment inflicted may be by imprisonment, with or without hard labour, for a term not exceeding six months, or by a fine to the extent of 20*l.* (or in default may be imprisoned), and the offender may also be bound over to keep the peace for an additional six months. The justices, if on the hearing upon the merits of such charge they deem the assault or battery not proved or justifiable, or too trifling to merit punishment, are to give the party charged, in dismissing the complaint, a certificate of dismissal, which will release him from any further proceedings, civil or criminal. (Sects. 44 and 45.)

Q.—In what cases have justices power to deal summarily with simple larcenies?

A.—It is by the 18 & 19 Vict. c. 126, enacted that, where *any* person is so charged at petty sessions with simple larceny (the value of the property stolen in the opinion of the justices not exceeding 5*s.*), or is charged with having *attempted* to commit either larceny from the person, or simple larceny, the justices may proceed to hear and determine the charge in a summary way. And if the person charged shall confess the same, or the justices, after hearing the case for the prosecution and for the defence, shall find the charge to be proved, the justices may convict such person, and commit him to prison, with or without hard labour, for any period not exceeding three calendar months, or (if they find the charge not proved) shall dismiss the charge, and deliver to the person so tried a certificate of dismissal.

Q.—In what cases may the accused demand a trial by jury?

A.—When a person is charged with any offence for which he is liable, on summary conviction, to be imprisoned for a term exceeding three months, and which is not an assault, he may, *before the charge is gone into*, claim to be tried by a jury, and thereupon the case will be treated as an indictable offence, and the magistrates will have no jurisdiction. Before the charge is gone into, the accused should be informed of his right of trial by jury, and asked if he desired such a trial. And in the case of a child, similar information must be given to the child's parent or guardian, if present, and a similar right may be claimed by such parent or guardian. (42 & 43 Vict. c. 49, s. 17.)

Q.—What is the definition of (1) a child, (2) a young person, and (3) an adult, in the Summary Jurisdiction Act, 1879 ?

A.—The expression “child” means a person who, in the opinion of the court before whom he is brought, is under the age of twelve years. The expression “young person” means a person who, in the opinion of the court before whom he is brought, is of the age of twelve years and under the age of sixteen years. The expression “adult” means a person who, in the opinion of the court before whom he is brought, is of the age of sixteen years and upwards. (42 & 43 Vict. c. 49, s. 49.)

Q.—What offences by a child may be tried by a court of summary jurisdiction, and what punishment may be given ?

A.—(1.) Where a child is charged before a court of summary jurisdiction with any indictable offence, other than homicide, the court, if they think it expedient so to do, and if the parent or guardian of the child so charged, when informed by the court of his right to have the child tried by a jury, does not object to the child being dealt with summarily, may deal summarily with the offence and inflict the same description of punishment as might have been inflicted had the case been tried on indictment.

Provided that—

- (a) A sentence of penal servitude shall not be passed, but imprisonment shall be substituted therefor, and
- (b) Where imprisonment is awarded the term shall not in any case exceed one month ; and

- (c) Where a fine is awarded the amount shall not in any case exceed forty shillings ; and
- (d) Where the child is a male the court may either, in addition to or instead of any other punishment, adjudge the child to be as soon as practicable privately whipped with not more than six strokes of a birch rod by a constable, in the presence of an inspector or other officer of police of higher rank than a constable, and also in the presence, if he desires to be present, of the parent or guardian of the child.

(2.) For the purpose of a proceeding under this section the court of summary jurisdiction, at any time during the hearing of the case at which they become satisfied by the evidence that it is expedient to deal with the case summarily, shall cause the charge to be reduced into writing and read to the parent or guardian of the child, and then address a question to such parent or guardian to the following effect : “ Do you desire the child to be tried by a jury and object to the case being dealt with summarily ; ” with a statement, if the court think such statement desirable for the information of such parent or guardian, of the meaning of the case being dealt with summarily, and of the assizes or sessions (as the case may be) at which the child will be tried if tried by a jury.

(3.) Where the parent or guardian of a child is not present when the child is charged with an indictable offence before a court of summary jurisdiction, the court may, if they think it just so to do, remand the child for the purpose of causing notice to be served on such parent or guardian, with a view, so far as is practicable, of securing his attendance at the hearing of

the charge, or the court may, if they think it expedient so to do, deal with the case summarily.

(4.) This section shall not prejudice the right of a court of summary jurisdiction to send a child to a reformatory or industrial school.

(5.) This section shall not render punishable for an offence any child who is not, in the opinion of the court before whom he is charged, above the age of seven years, and of sufficient capacity to commit a crime. A child, on summary conviction for an offence punishable on summary conviction under this act or under any other act, whether past or future, shall not be imprisoned for a longer period than one month nor fined a larger sum than 40s. (42 & 43 Vict. c. 49, ss. 10 and 15.)

Q.—What offences by young persons may be dealt with summarily?

A.—(1) Simple larceny.

(2) Offences punishable by statute as simple larceny.

(3) Larceny from the person.

(4) Larceny as a clerk or servant.

(5) Embezzlement by a clerk or servant.

(6) Receiving stolen goods.

(7) Aiding and abetting any such offences.

(8) Attempts to commit such offences.

(9) Offences against railways or railway carriages within 24 & 25 Vict. c. 100, ss. 32 and 33, or within 24 & 25 Vict. c. 97, s. 35.

(10) Offences against post office laws. (42 & 43 Vict. c. 49, s. 11.)

Q.—What punishment may be awarded in the last-mentioned case?

A.—He may be ordered either to pay a fine not

exceeding 10%, or to be imprisoned, with or without hard labour, for any term not exceeding three months; and if the young person is a male, and in the opinion of the court under the age of fourteen years, the court, if they think it expedient so to do, may, either in substitution for, or in addition to, any other punishment under this act, adjudge such person to be, as soon as practicable, privately whipped with not more than twelve strokes of a birch rod by a constable, in the presence of an inspector or other officer of police of higher rank than a constable, and also in the presence, if he desires to be present, of the parent or guardian of such young person. (42 & 43 Vict. c. 49, s. 11.)

Q.—For what offences is an adult liable to be dealt with summarily?

A.—Where a person, who is an adult, is charged before a court of summary jurisdiction with any of the offences mentioned above, the property affected not being above the value of 40s., *except in the case of attempts*, when value is immaterial, the court, if they think it expedient so to do, having regard to the character and antecedents of the person charged, the nature of the offence, and all the circumstances of the case, and if the person charged with the offence, when informed by the court of his right to be tried by a jury, consents to be dealt with summarily, may deal summarily with the offence, and adjudge such person, if found guilty of the offence, to be imprisoned, with or without hard labour, for any term not exceeding three months, or to pay a fine not exceeding 20%. And if the value of the property which is the subject of

the alleged offence, and the person charged plead guilty, he may be sentenced to imprisonment for six months. (42 & 43 Vict. c. 49, ss. 12 and 13.)

Q.—Can an adult be dealt with summarily, when the punishment for the offence is penal servitude?

A.—No; where a person, who is an adult, is charged before a court of summary jurisdiction with any indictable offence, and it appears to the court that the offence is one which, owing to a previous conviction or indictment of the person so charged, is punishable by law with penal servitude, the court shall not deal with the case summarily. (42 & 43 Vict. c. 49, s. 14.)

Q.—What power has the court of granting a separation on its being proved that the husband has assaulted the wife?

A.—By the Matrimonial Causes Act, 1878, it is enacted that if the husband shall be convicted of an aggravated assault on the wife, the court or magistrate before whom he shall be convicted may, if satisfied that the future safety of the wife is in peril, order that the wife shall be no longer bound to cohabit with her husband, and such order shall have the force and effect in all respects of a decree of judicial separation on the ground of cruelty, and such order may further provide that the husband pay such weekly sum as may seem to be in accordance with his means and with any means the wife may have for her support; and the court or magistrate shall have power from time to time to vary the same upon the application of either party that the means of the husband or wife have altered in amount since the original order or any subsequent order varying it shall have been made; and further,

that the legal custody of any children of the marriage under the age of ten years shall, in the discretion of the court, be given to the wife, but no order for payment of money by the husband or for the custody of the children of the marriage shall be made in favour of a wife who shall be proved to have committed adultery, unless such adultery has been condoned, and any such order may be discharged on proof that since the making thereof the wife has been guilty of adultery. (41 Vict. c. 19, s. 4.)

Q.—When must magistrates commit for trial?

A.—In case the justices shall find the assault or battery complained of to have been accompanied by any attempt to commit a felony, or shall be of opinion that the same is a fit subject for prosecution by indictment, they shall deal with the case as if they had no authority finally to hear and determine the same; provided also that nothing herein contained shall authorize any justices to hear and determine any case of assault or battery in which any question shall arise as to the title of any lands, tenements or hereditaments, or any interest therein or accruing therefrom, or as to any bankruptcy or any execution under process of any court of justice. (24 & 25 Vict. c. 100, s. 46.)

Q.—How is the accused brought before the justice?

A.—Where a written *information* has been laid before any justice of the peace for any county or place in England or Wales of any offence committed within his jurisdiction, and made punishable on summary conviction before one or more justices, or where any *complaint*, whether written or verbal, has been made before him in respect of a matter in which one

or more justices have by law authority to make an order for the payment of money or otherwise, he is to issue his *summons* to the party charged requiring him to appear and answer the charge, and if the summons be disobeyed, he may then issue a *warrant* to apprehend him and bring him before the court, or, if the justice think fit, he may, in the case of an information, and provided it be supported by the oath of the prosecutor, cause a warrant instead of a summons to be issued in the first instance. By the general rule, however, and subject to exception in any particular case, where a different limitation of time is provided by act of parliament, every such information or complaint must be made within six calendar months of the offence. (See 11 & 12 Vict. c. 43, s. 11.)

Q.—How may the attendance of witnesses be compelled?

A.—By summons, and if the summons be disobeyed, the justice may issue his warrant for the same purpose, or, if satisfied by evidence upon oath that the witness will not attend, may issue such warrant in the first instance. (11 & 12 Vict. c. 43, s. 7.)

Q.—How is the hearing conducted?

A.—The hearing is to take place before one justice, or two or more, as may be directed in the act of parliament relating to the particular offence, or, where there is no direction, then before any one justice of the county or place where the matter has arisen, and the room where it takes place is to be deemed an open court to which the public are to have access, and the prosecutor or complainant is to be allowed to conduct his case, and to examine and cross-examine the wit-

nesses by his counsel or attorney, and the like privilege is to be allowed to the defendant. The evidence is taken and judgment given, every conviction or order being drawn up in proper form and lodged with the clerk of the peace to be filed among the records of the quarter sessions, and a certificate of every order of dismissal being also drawn up and given to the defendant. (11 & 12 Vict. c. 43, s. 14.)

Q.—How is the payment of fines or costs secured?

A.—For the amount of such costs or of any pecuniary penalty or sum of money adjudged by a conviction or order, the court may issue a warrant of distress on the goods and chattels of the party, or, in default of distress, or where the statute simply directs imprisonment, may issue a warrant of commitment to prison. But if satisfied that a warrant of distress would be ruinous to the defendant, or that he has no goods, the court is authorized to issue a warrant of commitment in any case in lieu of a warrant of distress. (11 & 12 Vict. c. 43, s. 19; 42 & 43 Vict. c. 49, s. 21.)

Q.—What right of appeal is there from a summary conviction?

A.—Where, in pursuance of any act, whether past or future, any person is adjudged by a conviction or order of a court of summary jurisdiction to be imprisoned without the option of a fine, either as a punishment for an offence, or, save as hereinafter mentioned, for failing to do or to abstain from doing any act or thing required to be done or left undone, and such person is not otherwise authorized to appeal

to a court of general or quarter sessions, and did not plead guilty or admit the truth of the information or complaint, he may, notwithstanding anything in the said act, appeal to a court of general or quarter sessions against such conviction or order. Provided that this section shall not apply where the imprisonment is adjudged for failure to comply with an order for the payment of money, for the finding of sureties, for the entering into any recognizance, or for the giving of any security. (42 & 43 Vict. c. 49, s. 19.)

Q.—Under what conditions is an appeal allowed ?

A.—It is enacted by the 42 & 43 Vict. c. 49, s. 31, that where any person is authorized by this act or by any future act to appeal from the conviction or order of a court of summary jurisdiction to a court of general or quarter sessions, he may appeal to such court, subject to the conditions and regulations following:—

(1.) The appeal shall be made to the next practicable court of general or quarter sessions having jurisdiction in the county, borough or place for which the said court of summary jurisdiction acted, and holden not less than *fifteen* days after the day on which the decision was given upon which the conviction or order was founded ; and

(2.) The appellant shall, within *seven* days after the day on which the said decision of the court was given, give notice of appeal, by serving on the other party and on the clerk of the said court of summary jurisdiction notice in writing of his intention to appeal and of the general grounds of such appeal ; and

(3.) The appellant shall within *three* days after the

day on which he gave notice of appeal, enter into a recognizance before a court of summary jurisdiction, with or without a surety or sureties as that court may direct, conditioned to appear at the said sessions and to try such appeal, and to abide the judgment of the Court of Appeal thereon, and to pay such costs as may be awarded by the Court of Appeal; or the appellant may, if the court of summary jurisdiction before whom the appellant appears to enter into a recognizance think it expedient, instead of entering into a recognizance, give such other security by deposit of money with the clerk of the court of summary jurisdiction, or otherwise, as that court deem sufficient; and

(4.) Where the appellant is in custody, if the court think fit on the appellant entering into such recognizance, or giving such other security as aforesaid, release him from custody; and

(5.) Every notice in writing required by this section to be given by an appellant shall be in writing signed by him, or by his agent on his behalf, and may be transmitted as a registered letter by the post in the ordinary way, and shall be deemed to have been served at the time when it would be delivered in the ordinary course of the post.

By the 47 & 48 Vict. c. 43, where any person is authorized by any act passed *before* the Summary Jurisdiction Act, 1879, to appeal from the conviction or order of a court of summary jurisdiction made in pursuance of the Summary Jurisdiction Acts or from a refusal to make any conviction or order in pursuance of those acts to a court of general or quarter sessions he shall appeal subject to the conditions and regulations above stated.

Q.—What power is there of obtaining the judgment of a superior court as to the validity of a summary conviction ?

A.—Any person aggrieved who desires to question a conviction, order, determination or other proceeding of a court of summary jurisdiction, on the ground that it is erroneous in point of law, or is in excess of jurisdiction, may apply to the court to state a special case, setting forth the facts of the case and the grounds on which the proceeding is questioned, and, if the court decline to state the case, may apply to the High Court of Justice for an order requiring the case to be stated. The application shall be made, and the case stated, within such time and in such manner as may be from time to time directed by rules under this act, and the case shall be heard and determined in manner prescribed by rules of court made in pursuance of the Supreme Court of Judicature Act, 1875, and the acts amending the same, and, subject as aforesaid, the 20 & 21 Vict. c. 43, shall, so far as it is applicable, apply to any special case stated under this section as if it were stated under that act. (42 & 43 Vict. c. 49, s. 33.)

Q.—What is meant by backing a warrant ?

A.—It is the indorsement of a warrant with his name by a justice of the peace for the county or place in England or Wales into which the person against whom the warrant is issued shall escape or go, or in which he shall reside or be, or be supposed or suspected to be, and such indorsement authorizes the execution of such warrant within his jurisdiction.

(11 & 12 Vict. c. 42, s. 11; 11 & 12 Vict. c. 43, s. 3; 4 Bl. 291.)

Q.—For what length of time may a prisoner be remanded by magistrates?

A.—By 11 & 12 Vict. c. 42, s. 21, a prisoner cannot be remanded for longer than eight clear days.

Q.—Within what time must an action against a justice for malfeasance be brought?

A.—No action shall be brought against any justice of the peace for anything done by him in the execution of his office, unless the same be commenced within six calendar months next after the act complained of shall have been committed. (11 & 12 Vict. c. 44, s. 8.)

And he is also entitled, on being sued for any oversight, to receive notice one calendar month beforehand. (2 Steph. Comm. p. 652; see also Paley, Sum. Conv. 506, 507.)

Actions against metropolitan police magistrates must be brought within *three* months. (2 & 3 Vict. c. 71, s. 53.)

Q.—What is the scale of punishment imposed by a court of summary jurisdiction for non-payment of fines?

A.—The period of imprisonment imposed by a court of summary jurisdiction in respect of the non-payment of any sum of money adjudged to be paid by a conviction, or in respect of the default of a sufficient distress to satisfy any such sum, shall be such period as in the opinion of the court will satisfy the justice of the case, but shall not exceed in any

case the maximum fixed by the following scale, that is to say—

Where the amount of the sum or sums of money adjudged to be paid by a conviction as ascertained by the conviction	The said period shall not exceed
Does not exceed 10s.	Seven days.
Exceeds 10s. but does not exceed 1l.	Fourteen days.
" 1l. " " 5l.	One month.
" 5l. " " 20l.	Two months.
" 20l.	Three months.

and such imprisonment shall be without hard labour, except where hard labour is authorized by the act on which such conviction is founded, in which case the imprisonment may, if the court thinks the justice of the case requires it, be with hard labour, so that the term of hard labour awarded do not exceed the term authorized by the said act. (42 & 43 Vict. c. 49, s. 5.)

And now, by the 47 & 48 Vict. c. 43, no whipping is to be awarded in addition to imprisonment on non-payment of any fine.

Q.—What recent enactment is there as to payment of costs on a summary conviction?

A.—Where a fine adjudged by a conviction by a court of summary jurisdiction to be paid does not exceed five shillings, then, except so far as the court may think fit to expressly order otherwise, an order shall not be made for payment by the defendant to the informant of any costs, and the court shall, except so far as they think fit to expressly order otherwise, direct all fees payable or paid by the informant, to be

remitted or repaid to him; the court may also order the fine, or any part thereof, to be paid to the informant in or towards the payment of his costs. And further, the court dealing summarily with any indictable offence may, if it seem fit, grant to any person who preferred the charge, or appeared to prosecute or give evidence, a certificate of the amount of the compensation which the court may deem reasonable for his expenses, trouble and loss of time therein, subject nevertheless to such regulations as may be from time to time made by a secretary of state, with respect to the payment of costs in the case of indictable offences; and the amount named in the certificate may include the fees payable to the clerk of the court of summary jurisdiction, and the fees payable to the clerk of the peace for filing the convictions, depositions and other documents required to be filed by him under this act, and such other expenses as are by law payable when incurred before a commitment for trial; and every certificate so granted shall have the effect of an order of court for the payment of the expenses of a prosecution for felony made in pursuance of the 7 Geo. IV. c. 64, and the acts amending the same, and the amount named in such certificate shall be paid in like manner as the expenses specified in such order would have been paid. (42 & 43 Vict. c. 49, ss. 8, 28.)

Q.—What summary method is there of recovering the possession of land after the determination of the tenancy, or on non-payment of rent?

A.—By the 1 & 2 Vict. c. 74, it is enacted, that when the interest of any tenant in lands, held at will

or for a term not exceeding seven years at a rent not exceeding 20% per annum, shall have ended, or shall have been determined by a legal notice to quit or otherwise, and such tenant shall refuse or neglect to quit and deliver up possession of the premises, it shall be lawful for the landlord or his agent to serve such tenant with a notice in writing of his intention to proceed to recover possession under the authority and according to the mode prescribed in that act; and if the tenant shall not appear at the time and place appointed, and show reasonable cause why the premises should not be so given up, it shall be lawful for the justices acting for the district, division or place within which the premises are situate, in petty sessions assembled, or any two of them, upon proof of the landlord's title, to issue a warrant to the constables of the district, commanding them, within a period of not less than twenty-one, nor more than thirty, clear days from the date of such warrant, to enter (by force if necessary) between the hours of nine in the morning and four in the afternoon and give possession of the same to the landlord.

And by the 11 Geo. II. c. 19, when six months' rent shall be in arrear, and no sufficient property upon which to distrain shall be found on the premises, the justices may view the same, and a notice may be affixed thereto stating that they will return at the expiration of not less than fourteen days, and they may then and there put the landlord in possession.

Arrests.

Q.—What is meant by an arrest?

A.—An arrest is the apprehending or restraining of the person of a man in order that he shall be forthcoming to answer an alleged or suspected crime. To this species of arrest all persons whatsoever are, without distinction, equally liable in criminal cases.

Q.—Is a constable allowed to break open a door to execute a warrant?

A.—Yes; when a warrant is received by the officer he is bound to execute it to the best of his ability, so far as the jurisdiction of the magistrate and himself extends, and he may break open doors in order to execute it in case of treason, felony or actual breach of the peace, provided that admittance cannot otherwise be obtained. Nor is there any immunity from arrests in cases of that description, even in the night-time, nor from arrest for any indictable offence whatever on Sundays. (11 & 12 Vict. c. 42, s. 4.)

Q.—When may arrests be made without warrant?

A.—By the 24 & 25 Vict. cc. 97, 100, which acts relate to malicious injuries to property, and to offences against the person, a constable may take into custody without a warrant any person whom he shall find lying or loitering in any highway, yard or other place during the night, and whom he shall have good cause to suspect of having committed, *or of being about to commit*, any *felony* mentioned in either of those acts, and he must take such person as soon as reasonably may be before a justice of the peace to be dealt with according to law. Moreover, within the *metro-*

politan police district, which includes the whole county of Middlesex and all places within fifteen miles of Charing Cross, with the exception of the City of London, a constable may take into custody without warrant any person whom he may find between sunset and the hour of eight in the morning loitering or lying about, and unable to give a satisfactory account of himself, or any person charged with aggravated assaults, or any person whose address cannot be ascertained, whom he shall find offending against the Metropolitan Police Acts. (10 Geo. IV. c. 44; 2 & 3 Vict. c. 47; 17 & 18 Vict. c. 33.)

Q.—Is there any difference in the consequences involved in an arrest, when made (1) by an officer, or (2) by a private individual?

A.—Yes, there is this distinction: where the peace officer arrests, he is protected, though it should turn out that no such crime as supposed had been in fact committed by any one (provided he can show that he had reasonable ground for suspecting the party arrested); but if a private person arrests, he acts more at his peril, and is not protected unless he can prove an actual commission of the crime by *some one*, as well as a reasonable ground for suspecting the particular person. Further, it must be noted that a private person cannot on mere suspicion justify breaking open doors, which a constable may do, even without a warrant.

Q.—When may a search warrant be issued?

A.—By 24 & 25 Vict. c. 96, s. 103, if any credible witness shall upon oath prove before a justice of the peace a reasonable cause to suspect that any person

has in his possession, or on his premises, any property whatsoever, in respect to which any offence punishable under that act shall have been committed, the justices may grant a warrant to search for such property, as in case of stolen goods; and any person to whom any such property shall be offered to be sold, pawned or delivered, is required (if in his power) to apprehend and carry before a justice of the peace the person offering the same, together with such property.

Proceedings before Magistrates.

Q.—How is the accused to be dealt with on being brought before the magistrate?

A.—The magistrate is bound to forthwith examine into the charge, witnesses may be served with a summons or warrant in a manner similar to that in which the presence of the accused is insured. If a witness refuse to be examined, he is liable to imprisonment for seven days; the magistrate takes in the presence of the accused the statement on oath or affirmation of those who know the facts of the case, and puts the same in writing, the accused being allowed to put by himself or his counsel any questions to witnesses brought against him. These statements (technically termed *depositions*) are then read over and signed respectively by the witnesses who have been examined, and by the magistrate taking such statements. These depositions are read over to the accused, and he is asked if he wishes to say anything in answer to the charge, and cautioned that he is not obliged to

say anything, but whatever he does say will be taken down in writing, and may be used in evidence against him at his trial. Whatever the accused then says is taken down in writing and signed by the magistrate. The accused is asked whether he desires to call any witnesses; if so, their statements are taken down. These statements, in the same way as those on the part of the prosecution, are read to, and signed by, the witnesses and the magistrate. If, when all the evidence against the accused has been heard, the magistrate does not think it is sufficient to put the accused on his trial for an indictable offence, he is forthwith discharged. But if he thinks otherwise, or the evidence raises a strong and probable presumption against the accused, he *commits* him for trial, either at once sending him to gaol so as to be forthcoming for trial, or admitting him to bail. (See hereon 11 & 12 Vict. c. 42; Har. Crim. Law, 327.)

Q.—When may the magistrate accept bail?

A.—The magistrate cannot accept bail in cases of treason (when it can only be granted by a Secretary of State or a judge of the Queen's Bench Division), but he, the magistrate, may for any other felony or the following misdemeanors:—

Obtaining or attempting to obtain property by false pretences, receiving property stolen or obtained by false pretences, perjury or subornation of perjury, concealing the birth of a child by secret burying or otherwise, wilful or indecent exposure of the person, riot, assault in pursuance of a conspiracy to raise wages, assault upon a peace officer in the execution of his duty, or upon any person acting in his aid, neglect

or breach of duty as a peace officer, or any misdemeanor for the prosecution of which the costs may be allowed out of the county rate. In other misdemeanors it is imperative on the magistrate to admit to bail.



Modes of Prosecution.

Q.—What are the formal modes of prosecution ?

A.—Either upon a previous finding of the fact by an inquest or grand jury, or without such previous finding: the former way is either by *presentment*, or by *indictment*; the latter by *information*.

Q.—What is a presentment ?

A.—A presentment, properly speaking, is the notice taken by a grand jury of any matter or offence from their own knowledge or observations, without any bill of indictment laid before them at the suit of the Crown: as the presentment by them of a nuisance, a libel, and the like, upon which the officer of the court must afterwards frame an indictment before the party prosecuted can be put to answer.

Q.—What is an indictment ?

A.—An indictment is a written accusation that one or more persons have committed a certain felony or misdemeanor, such accusation being preferred to, and (being found true) presented to the court on oath by a grand jury.

Q.—What is the duty of the grand jury ?

A.—When the grand jury have heard the evidence, if they think it a groundless accusation, they indorse on the back of the bill “not a true bill,”

or (which is the better way) "not found," and then the bill is said to be "thrown out," and the party is discharged without further answer. But a fresh bill may afterwards be preferred to a *subsequent* grand jury. On the other hand, if they are satisfied of the truth of the accusation, they indorse upon it "a true bill," anciently *billa vera*. The indictment is then said to be *found*, and the party stands indicted. But to find a bill there must at least twelve of the jury agree (the jury may consist of twenty-four persons). (4 Steph. Comm. p. 360.)

Q.—Give the form of an indictment.

A.—Suffolk, to wit: The jurors for our lady the Queen, upon their oath, present that John Styles on the 1st day of June, in the year of our Lord 1876, three pairs of shoes and one waistcoat of the goods and chattels of John Brown feloniously did steal, take and carry away, against the peace of our lady the Queen, her crown and dignity. (See Har. Crim. Law, p. 337.)

Q.—On what ground may an indictment be quashed?

A.—That some essential ingredient of the offence is omitted or not stated with sufficient certainty; but all formal defects must be objected to before the jury are sworn. Where, however, the defect does not alter the nature or quality of the offence an amendment will be permitted, as in the following:—

- (1) The name or description of any place, or of any owner of property forming the subject of charge;
- (2) The name or description of any person injured;

- (3) The name or description of any person whomsoever ;
- (4) The name or description of any matter whatsoever ;
- (5) Or in the ownership of any property (14 & 15 Vict. c. 100, s. 25).

Q.—What is an information ?

A.—By the term information is understood either a charge laid before a justice or justices of the peace with a view to a summary conviction, and which has been mentioned, or else a complaint exhibited by a common informer in one of the courts of law, to recover a penalty which some penal statute has made recoverable after the conviction of the offender by him who shall first sue or inform for the same, and that either on his own behalf or (more usually) on behalf of himself and the Crown jointly, or a complaint by the Crown in the Queen's Bench in respect of some offence, under the degree of treason or ordinary felony. Informations are of two kinds,—first, those which are truly and properly the suits of the Sovereign and filed *ex officio* by his own immediate officer, the attorney-general; secondly, those in which, though the Crown is the nominal prosecutor, yet it is at the relation of some private person or common informer; and these last are filed in the Queen's Bench by the Sovereign's coroner and attorney, usually called "The Master of the Crown Office," who is for this purpose the standing officer of the public. (See 4 Bl. 308.)

Q.—For what offences does an information *ex officio* lie ?

A.—For misdemeanors only, for in felonies no man

is to be put upon his trial except upon the oath of a grand jury. The offences for which this form of information properly lies are such grave misdemeanors as peculiarly tend to disturb or endanger the government, or to interfere with the course of public justice, or to molest public officers; for example, seditious libels or riots, obstructing officers in the execution of their duty, and bribery by officials.

Q.—How does an information by the Master of the Crown Office differ from one *ex officio*?

A.—Leave of the court must be granted for one by the Master of the Crown Office, which is obtained as follows: Application is made for a rule to show cause why a criminal information should not be filed against the person accused, this is supported by an affidavit giving all material facts; if granted this rule *nisi* may be discharged or made absolute as in ordinary cases.

Q.—What is meant by a coroner's inquisition?

A.—By a coroner's inquisition is meant the record of the finding of the jury sworn to inquire *super visum corporis* concerning the death of the deceased. On this record a person may be prosecuted for murder or manslaughter without the intervention of a grand jury, for the finding of the coroner's jury is itself equivalent to the finding of a grand jury.

Q.—By what act was the public prosecutor appointed, and what are his duties?

A.—By the 42 & 43 Vict. c. 22, which came into operation on the 1st January, 1880, the duty of the public prosecutor is set forth to be to institute, undertake or carry on under the superintendence of the

attorney-general, criminal proceedings (whether in the Court for Crown Cases Reserved, before sessions of oyer and terminer, or of the peace before magistrates or otherwise), and to give such advice and assistance to chief officers of police, clerks to justices and other persons, whether officers or not, concerned in any criminal proceeding, respecting the conduct of that proceeding, as may be for the time being prescribed under the act, or may be directed in a special case by the attorney-general.

The regulations under the act shall provide for the Director of Public Prosecutions taking action in cases which appear to be of importance or difficulty, or in which special circumstances, or the refusal or failure of a person to proceed with a prosecution, appear to render the action of such director necessary to secure the due prosecution of an offender, and also shall fix the areas or districts for which the assistants of such director shall respectively be appointed to act.

Where the Director of Public Prosecutions gives notice to any justice or coroner that he has instituted or undertaken, or is carrying on, any criminal proceeding, such justice or coroner shall transmit to the said director every recognizance, information, certificate, inquisition, deposition, document and thing connected with the proceeding: and the same shall be handed over by the said director to the proper officer of the court, and shall be under the same obligation on the same payment to deliver to an applicant copies thereof as the said justice, coroner or officer.

And further, every clerk to a justice or to a police court is to transmit to the said director a copy of the information, and of all depositions and other documents

relating to any case in which a prosecution for an offence instituted before such justice or court is withdrawn, or is not proceeded with in a reasonable time.

Nothing in that act is to interfere with the right of any person to institute, undertake or carry on any criminal proceeding.

When any criminal proceeding is undertaken by the said director, he is not to be bound over to prosecute, or to give security for costs; and if any person is so bound over to prosecute, or has given security for costs, he shall, on the said director undertaking such proceedings, be released therefrom, and the said director shall be liable for costs in lieu of such person.

And now the person holding for the time being the office of the Solicitor for the affairs of Her Majesty's Treasury is to be the Director of Public Prosecutions, and have the powers of such director. (47 & 48 Vict. c. 58, the Prosecution of Offences Act, 1884.)



Process.

Q.—When may a magistrate issue a warrant upon indictment found?

A.—By 11 & 12 Vict. c. 42, s. 3, it is enacted, that where an indictment shall have been found in any court of oyer and terminer, general gaol delivery, or general or quarter sessions of the peace, against any person then at large, a certificate of the fact shall be granted by the proper officer to the prosecutor, and upon production thereof to any justice of the peace for the place where the offence is alleged in the indictment to have been committed, or in which the

person indicted is, or is suspected to be, the justice shall issue a warrant to apprehend such person and cause him to be brought up to be dealt with according to law; and upon its being proved that he is the person named in the indictment, shall, without further inquiry, commit him for trial, or admit him to bail.

If the person against whom the indictment is found shall be in prison for any other offence, then, upon proof thereof, the justice shall issue his warrant to the gaoler commanding him to detain such prisoner in custody until by writ of *habeas corpus* he shall be removed therefrom for the purpose of being tried upon the indictment, or until he shall be otherwise discharged by due course of law.

Q.—If a defendant cannot be found, what steps may be taken against him?

A.—He is liable to be *outlawed*. The first process for this purpose, in cases of treason or felony, is a writ of *capias*; but in misdemeanors the process is less summary, for here there is in the first place a writ of *venire facias*, which is in the nature of a summons to cause the party to appear; and if by the return to such *venire* it appears that the party hath lands in the county whereby he may be distrained, then a distress infinite shall be issued from time to time till he appears. But if the sheriff returns that he has no lands in his bailiwick, then, upon his non-appearance, a writ of *capias* shall issue; and if he cannot be taken upon the first, a second and a third shall issue, called an *alias* and a *pluries capias*; and after the several writs have issued in a regular manner according to the nature of the respective crimes without any effect,

the offender shall be put in the *exigent*, in order to his outlawry, that is, he shall be exacted (proclaimed or required to surrender) at five successive sheriffs' county courts, and a writ of proclamation shall also be issued; and if he be returned *quinto exactus*, and does not appear at the fifth exaction or requisition, then he is adjudged to be *outlawed*, or put out of the protection of the law, so that he is incapable of taking the benefit of it in any respect, either by bringing action or otherwise, and his property is forfeited to the Crown. (4 Steph. Comm. p. 384.)

Q.—Is the life of an outlawed person protected?

A.—Yes; though anciently an outlawed felon was said to have *caput lupinum*, and might be knocked on the head like a wolf by anyone that should meet him, because, having renounced all law, he was to be dealt with as in a state of nature, when every one that should find him might slay him, yet now, to avoid such inhumanity, it is holden that no man is entitled to kill him wantonly or wilfully, but in so doing is guilty of murder, unless it happens in the endeavour to apprehend him; for any person may arrest an outlaw on a criminal prosecution either of his own head, or by writ or warrant of *capias utlagatum*, in order to bring him in to be dealt with according to law. (4 Bl. 319.)

Q.—What are the consequences of outlawry?

A.—The general consequences of outlawry, both in felonies or misdemeanors, are the following:—The person outlawed is *civiliter mortuus*. His goods are forfeited from the *exigent*, his lands from the outlawry, and the act abolishing forfeiture in general does not

interfere with this. He cannot hold property given or left to him. He cannot sue on his own contract, nor can he sue for the redress of an injury. He may be a witness, but cannot be a juror. (Har. Crim. Law, p. 364.) It should be noted that by the 42 & 43 Vict. c. 59, outlawry in civil proceedings is abolished.

Q.—What is a writ of *certiorari*?

A.—It is a writ directed to the inferior court requiring it to return the records of an indictment or inquisition depending before it, so that the party may have a trial in the Queen's Bench Division, or before such justices as the Queen shall assign to hear and determine the cause.

Q.—For what purposes will a writ of *certiorari* be granted?

A.—(1) To consider and determine the validity of an indictment, and the proceedings thereon, and to quash or confirm them as there is cause: (2) Where it is surmised that a partial or insufficient trial will probably be had in the court below in order to have the person against whom it is found tried *at bar*, or else before the justice of *nisi prius*, according to the course of a civil action: (3) In order to plead the royal pardon there; or, (4) In order to issue process of outlawry against the offender in places where the process of the inferior court will not reach him. Such writ of *certiorari* when issued and delivered to the inferior court for removing any record or other proceeding, as well upon indictment as otherwise, supersedes the jurisdiction of such inferior court, and makes all subsequent proceedings therein entirely erroneous and illegal, unless indeed the Queen's Bench remands the record to the court

below to be there tried and determined. (4 Steph. Comm. p. 386.)

Q.—What is the mode of obtaining this writ ?

A.—The application must be founded on an affidavit suggesting adequate ground for the removal. Motion must be made in court or to a judge in chambers and leave obtained, and this whether the application is made on the part of the prosecution or of the defence. When it is granted at the instance of the defendant, the amount of recognizance to be entered into before a judge of the Queen's Bench Division, or a justice of the jurisdiction where the defendant resides, by the defendant, and his bail, is ordered by the court and indorsed on the writ. Moreover, when at the instance of the defendant, this recognizance must contain the further provision that the defendant, if convicted, will pay to the prosecutor his costs incurred subsequent to the removal of the indictment, and when at the instance of the prosecutor he must enter into a recognizance, with the condition that he will pay the defendant, if acquitted, the costs incurred subsequent to such removal. And if such recognizance be not entered into by the parties at whose instance the *certiorari* is awarded, the court proceeds to trial as if the writ had not been awarded. It is after this recognizance has been lodged with the clerk of assize or clerk of the peace that all proceedings in the court below are erroneous. (Har. Crim. Law, 368.)

Arraignment.

Q.—What is meant by arraignment?

A.—To arraign is nothing else but to call the prisoner to the bar of the court to answer the matter charged upon him in the indictment.

The indictment is then read over to him distinctly, and it is then demanded of him whether he is guilty or not guilty of the offence charged.

Q.—What course may a prisoner take on being arraigned?

A.—He may either *stand mute or confess the fact*, or he may *plead* to the indictment, which is to be considered as the next stage of the proceedings.

Q.—What course is taken when the prisoner maliciously stands mute?

A.—By 7 & 8 Geo. IV. c. 28, s. 2, it is enacted that, if any person being arraigned upon, or charged with, any indictment or information for treason-felony, piracy or misdemeanor, shall stand mute of malice, or will not answer directly to the indictment or information, in every such case it shall be lawful for the court, if it shall so think fit, to order the proper officer to enter a plea of not guilty on behalf of such person, and the plea so entered shall have the same force and effect as if such person had actually pleaded the same. When there is reason to doubt, however, whether the prisoner is sane, a jury should be charged to inquire whether he is sane or not, which jury may consist of any twelve persons who may happen to be present, and upon this issue the question will be, whether he has intellect enough to plead and to comprehend the

course of the proceedings. If they find the affirmative, the plea of not guilty may be entered, and the trial will proceed; but if the negative, the provision of 39 & 40 Geo. III. c. 94, s. 2, is then applicable, by which it is enacted that, insane persons indicted for any offence, and on their arraignment found to be insane by a jury lawfully impanelled for that purpose, so that they cannot be tried upon the indictment, shall be ordered by the court to be kept in strict custody till the royal pleasure be known.

Q.—If a prisoner appear to be insane when arraigned, what steps are taken?

A.—A jury is sworn to ascertain the state of his mind; if they find him insane he cannot be tried, but their finding is recorded and the prisoner may be kept in strict custody until her Majesty's pleasure is known.

If a prisoner becomes insane after trial a reprieve may be granted, and he will then be detained under the provisions of the Criminal Lunatics Act, 1884, mentioned later.

Q.—When the prisoner is deaf and dumb, how are the contents of the indictment to be communicated to him?

A.—In the case where the prisoner is deaf and dumb, he may be communicated with by signs, or the indictment may be shown to him with the usual questions written on paper. (*Jones' case*, 1 Leach, 120; 1 Chit. Cr. L. 417.)

Plea and Issue.

Q.—What pleas may be made to an arraignment?

A.—(1) A plea to the jurisdiction; (2) A demurrer; (3) A plea in abatement; (4) A special plea in bar; or (5) The general issue. A defendant cannot in turn go through the whole of these pleas; not more than one plea can be pleaded to an indictment for misdemeanor, or a criminal information. In felonies, if the accused pleads in abatement he may afterwards, if the plea is adjudged against him, plead the general issue of not guilty.

Q.—What is a plea to the jurisdiction?

A.—A plea to the jurisdiction is where an indictment is taken before a court that hath no cognizance of the offence, as if a man be indicted for treason at the quarter sessions. In such or in similar cases, he may except to the jurisdiction of the court without answering at all to the crime alleged, but a formal plea to the jurisdiction is of rare occurrence, it being competent to a defendant to bring forward this sort of objection in some cases by way of demurrer, or by motion in arrest of judgment; in others under the general issue. (4 Steph. Comm. p. 399.)

Q.—What is a demurrer, and what is its effect?

A.—A demurrer arises when the facts, as alleged in the indictment or information, are allowed to be true, but the person accused takes exception to the sufficiency of the charge on the face of it, as if he insists that the facts stated are no felony, treason, or whatever the crime is alleged to be. Thus, for instance, if a man be indicted for *feloniously* stealing a greyhound, which is an animal not the subject of larceny at

1. The first part of the document is a title page. It contains the title "THE HISTORY OF THE UNITED STATES OF AMERICA" and the author "BY JAMES MADISON".

2. The second part of the document is a preface. It discusses the importance of history and the role of the government in preserving it.

3. The third part of the document is the main body of the text. It is divided into several chapters, each covering a different aspect of the history of the United States.

4. The fourth part of the document is a conclusion. It summarizes the main points of the history and offers some final thoughts on the future of the nation.

prisoner ought to be discharged from the prosecution. These are principally of four kinds:—a former acquittal; a former conviction; a former attainder; or a pardon.

The plea of *autrefois acquit*, or a former acquittal, is grounded on this universal maxim of the common law of England, that no man is to be brought into jeopardy more than once for the same offence; and hence it is allowed as a consequence, that when a man is once fairly found not guilty upon an indictment or other prosecution before any court having a competent jurisdiction of the offence, he may plead such acquittal in bar of any subsequent accusation for the same crime. But if a man be indicted as accessory and acquitted, that acquittal will be no bar to an indictment as principal nor *à converso*.

The plea of *autrefois convict*, or a former conviction (whether judgment was ever given or not), for the same identical crime is also a good plea in bar to an indictment; and this depends upon the same principle as the former, that no man ought to be twice brought into danger for one and the same crime, and it is governed in general by the same rules. And if the former conviction was for a capital offence, and followed by an actual judgment of death, the defendant may resort to—

The plea of *autrefois attain*, or a former attainder for the same crime, for this also is a good plea in bar, depending upon the same principle, and governed in general by the same rules as the plea of *autrefois convict*.

Lastly, a *pardon* may be pleaded in bar as at once destroying the end and purpose of the indictment by

remitting that punishment which the prosecution is calculated to inflict. (4 Steph. Comm. pp. 405 *et seq.*)

Q.—What is meant by pleading the general issue ?

A.—It is the plea of *not guilty*. This is the proper form wherever the prisoner means either to deny or to justify the charge in the indictment ; and it is to be observed that in such case there can be no special plea, either in treason or felony. Thus, on an indictment for murder, a man cannot plead that it was in his own defence against a robber ; but he must plead the general issue not guilty, and give this special matter in evidence.



The Jury.

Q.—What are the qualifications of petty jurors ?

A.—Every man between the ages of twenty-one and sixty, residing in any county in England, who has in his own name or in trust for him within the same county 10*l.* by the year above reprises in lands or tenements, or in rents therefrom, or in such lands or rents taken together in fee simple, fee tail, or for the life of himself or some other person, or lands to the value of 20*l.* a year held by lease for twenty-one years or longer, or for a term of years determinable on any life or lives, or who, being a householder, is rated or assessed to the poor-rate, or to the inhabited house-duty in Middlesex, to a value of not less than 30*l.*, or in any other county not less than 20*l.*, or who occupies a house containing not less than fifteen windows, is qualified to serve on petty juries at the courts at Westminster, in the counties palatine and at

the assizes, and also at both the grand and petty juries at the county sessions. (6 Geo. IV. c. 50; 33 & 34 Vict. c. 77.)

Q.—Who are exempt from serving on juries?

A.—Peers, members of parliament, clergymen, Roman Catholic priests, ministers of any congregation of Protestant Dissenters or Jews, whose place of meeting is duly registered, provided they follow no secular occupation, except that of schoolmaster; those actually practising in the law, as barristers, solicitors, managing clerks, &c., officers of the law courts and acting clerks of the peace, or their deputies; coroners, gaolers and their subordinates, and keepers in public lunatic asylums; physicians, surgeons, apothecaries, pharmaceutical chemists actually practising; officers of the navy, army or militia or yeomanry, if on full pay; pilots, certain persons engaged in the civil service, officers of the police magistrates to a certain extent, burgesses as regards the sessions of the county in which their borough is situate. (33 & 34 Vict. c. 77.)

Q.—What is meant by the prisoner's right of challenge to the jury?

A.—The prisoner or prisoners, for usually a batch of them are brought up at the same time to appear before the jury, are apprised of their right to object to or *challenge* any of the jurors by the clerk of arraigns or other officer of the court. They are of two kinds—(1) for causes; (2) peremptory. The former are either:

(1.) To the *array*, when exception is taken to the whole panel.

(2.) To the polls, when particular individuals are objected to. (Har. Crim. Law, p. 388.)

Q.—What is a peremptory challenge and how many are allowed?

A.—In felonies the prisoner is allowed to arbitrarily challenge, and so exclude a certain number of jurors without showing any cause at all. He cannot claim this right in misdemeanors, but it is usual on application to the proper officer for him to abstain from calling any name objected to by the prosecutions or defendant within reasonable limits, and this course has been sanctioned by the court. The defendant may peremptorily challenge to the number of thirty-five in treason, except in that treason which consists of compassing the Queen's death by a direct attempt against her life or person. In such excepted case, in murder, and all other felonies, the number is limited to twenty. If challenges are made beyond the number allowed, those above the number are entirely void, and the trial proceeds as if no such extra challenge had been made. (Har. Crim. Law, p. 392.)

The Hearing.

Q.—State the course of proceedings upon a trial.

A.—After the jury has been sworn and the crier has made proclamation of the nature of the offence, the counsel for the prosecution opens the case to the jury, stating the principal facts upon which he intends to rely. He calls his witnesses, who are sworn and examined by him, and then subjected to cross-examination by the counsel for the defence; or if the prisoner

is not defended by counsel, to any questions which the prisoner may put to them. The counsel for the prosecution may re-examine on matters referred to in the cross-examination. The court also may at any time interpose and ask questions of the witnesses. After the case for the prosecution is closed, it is ascertained whether the defence intend to call any witnesses. If they do not, the counsel for the prosecution may address the jury a second time in support of his case, for the purpose of summing up the evidence against the prisoner, but this right will be exercised only in exceptional cases, as where the evidence materially differs from the counsel's instructions. But if the prisoner has witnesses whom he wishes to call, his counsel opens the case for the defence and calls these witnesses in support thereof. They are also subject to cross-examination. The counsel for the prisoner is now entitled at the close of the examination of his witnesses to sum up his evidence.

After this address by the counsel for the defence, the counsel for the prosecution has the right of reply. This is in consequence of the defence having adduced evidence, written or parol, in defence (but mere evidence to character has not in practice this result), for, if he has not done so, the address of the counsel for the defence is the last. There is, however, one exception. When the Attorney-General, or some one else as his representative, is prosecuting, he has the right of reply, although no evidence has been adduced for the defence. If two prisoners are jointly indicted for the same offence, and only one calls witnesses, the counsel for the prosecution has the right to reply generally, but not if the offences are separate, and the prisoners might have been separately indicted.

If the prisoner is not defended by counsel, he may cross-examine the witnesses for the prosecution, and examine his own witnesses, and at the end of such examination address the jury in his own defence. And if one only of two prisoners jointly indicted is defended by counsel, the undefended one may cross-examine as above, and make his statement to the jury before or after the address of the counsel for the other, as the court thinks fit; if the prisoners jointly indicted are defended by different counsel, each counsel cross-examines and addresses the jury in order of seniority at the bar, or, if the judge thinks desirable, in order of the names of the prisoners on the indictment. (Har. Crim. Law, pp. 396 *et seq.*)

Q.—How many witnesses must there be to support a charge of treason?

A.—By statutes 1 Edw. VI. c. 12, 5 & 6 Edw. VI. c. 11, and 7 Will. III. c. 3, *two* lawful witnesses are required to convict a prisoner, unless he shall willingly and without violence *confess* the same. And both witnesses must be to the same overt act of treason, or one to one overt act, and the other to another overt act of the same species of treason, and not of distinct heads or kinds; and that no evidence shall be admitted to prove any overt act not expressly laid in the indictment.

Q.—State any other case you know in which there must be more than one witness.

A.—In prosecutions for perjury there can be no conviction except on the oath of two witnesses, though it will be sufficient that the perjury be directly proved by one witness, and that corroborative evidence on

some particular point be given by another ; and where the alleged perjury consists in the defendant's having contradicted what he himself swore on a former occasion, the testimony of a single witness in support of the defendant's own original statement will support a conviction. But in almost every other accusation the oath of one positive witness will be sufficient, the exception in case of treason being allowed in order to secure the subject more effectually from false accusation in a case so penal, and where there may be danger of his being made the victim of political oppression in the case of perjury, because it would not be reasonable to convict where there is only one oath against another. (4 Steph. Comm. p. 428.)

Q.—At what stage of the hearing may evidence be given of a previous conviction ?

A.—By 24 & 25 Vict. cc. 96, 99, it is provided that in an indictment under those acts alleging the offence to have been committed after a previous conviction, the defendant shall in the first instance be arraigned upon so much of the indictment as charges the subsequent offence concerning which only the jury shall in the first instance be charged to inquire ; and that if they shall find him guilty thereof, or if on arraignment he shall plead guilty to the subsequent offence, then, and not before, the previous conviction shall be enquired into. But there is an exception as to this if the prisoner gives evidence as to character, for in that case the prosecutor may in answer thereto give evidence of the previous conviction before the subsequent offence is found, and the jury shall then inquire of the previous conviction and of the subsequent offence at the same time.

Q.—When is a defendant allowed to defend in *forma pauperis*?

A.—Where he will swear that he is not worth 5*l.* besides his wearing apparel after payment of debts on petition to the Queen's Bench Division supported by affidavit. The petition is presented to the court or a judge in chambers; if granted a rule is drawn up mentioning the counsel and solicitor for the defence. The defendant then pays no fees on any steps taken.



Evidence.

[I am indebted for the principal points referred to under the above heading to Mr. Justice Stephen's "Digest of the Law of Evidence," to which the Student is referred for further information.]

Q.—In a question whether A. and B. conspired together to defraud the custom-house of duty, may evidence be given as against B. that A. made a false entry to carry out the fraud?

A.—Yes; for when two or more persons conspire together to commit any offence or actionable wrong, everything said, done or written by any one of them in the execution or furtherance of their common purpose, is deemed to be so said, done or written by every one, and is deemed to be a relevant fact as against each of them, but statements as to measures taken in the execution or furtherance of any such common purpose, are not deemed to be relevant as such as against any conspirators, except those by whom or in whose presence such statements are made.

Q.—May evidence be given as to a fact supplying a motive for the commission of an offence?

A.—Yes; and also any subsequent conduct of such person apparently influenced by the doing of the act and any act done in consequence of it, by or by the authority of that person. Thus, in a question as to whether A. murdered B., the fact that at the instance of A., B. murdered C. twenty-five years before B.'s murder, and that A. at or before that time used expressions showing malice against C., are deemed to be relevant as showing a motive on A.'s part to murder B.

Again, on A. being charged with a crime, evidence may be given that the instrument with which the crime was committed was procured by A.

Q.—A. is tried for an offence: may evidence be given that he has a tendency to commit such offence?

A.—No; the fact that he formerly committed another crime of the same sort, and had a tendency to commit such crimes, is irrelevant. (*R. v. Cole*, 1 Phi. Ev. 508.)

Q.—Proceedings are taken against A. for having in his possession stolen goods: can evidence of his having so transgressed before be given?

A.—Yes; where proceedings are taken against any person for having received stolen goods, knowing them to be stolen, or for having in his possession stolen property, the fact that there was found in his possession other property stolen within the period of twelve months immediately preceding, is relevant to the question whether he knew the property to be stolen which forms the subject of the proceedings taken against him. (See 34 & 35 Vict. c. 112.)

But it has now been decided that to prove guilty

knowledge it must be shown that such other property was found in the possession of the prisoner at the time when he is found in possession of the property, the subject of the indictment. (*Reg. v. Carter*, 50 L. T. 432.)

If in the case of such proceedings as aforesaid, evidence has been given that the stolen property has been found in the possession of the person proceeded against, the fact that such person has within five years immediately preceding been convicted of any offence involving fraud or dishonesty, is deemed to be relevant for the purpose of proving that the person accused knew the property which was proved to be in his possession to have been stolen, and may be proved at any stage of the proceedings, provided that no less than seven days' notice in writing has been given to the person accused that proof is intended to be given of such previous conviction.

Thus, where A. was charged with receiving from B. goods stolen from C., evidence may be given that A. had before received goods from B., stolen from C., and had pledged them, and will be relevant to the fact that A. knew the goods in question to be stolen. (*Dunn's case*, 1 Moo. C. C. 146.)

Further, to prove guilty knowledge evidence may be given that the prices paid by the prisoner were far below their value, and for this purpose a statement of prices made out by the wife of the prisoner, at his request and produced in his presence, may be admitted in evidence. (*Reg. v. Mallory*, 50 L. T. 429.)

Q.—A. is accused of setting fire to his house, in order to obtain money for which it is insured:

can evidence be given of a previous similar occurrence?

A.—When there is a question whether an act was accidental or intentional, the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is deemed to be relevant. The facts that A. had previously lived in two other houses successively, each being insured, in each of which a fire occurred, and that after each of those fires, A. received payment from a different insurance office, are deemed to be relevant as tending to show that the fires were not accidental. (*R. v. Gray*, 4 F. & F. 1182.)

Following the above rule, it may be mentioned that in a question as to whether poison was administered to B. by A. accidentally or intentionally, evidence may be given that similar poison had been given to A.'s children on former occasions, and that A. had prepared their meals, and will tend to show that the poisoning was not accidental. (*R. v. Geering*, 18 L. J., M. C. 215.)

Q.—Define confessions; when are they not voluntary?

A.—A confession is an admission made at any time by a person charged with a crime, stating or suggesting the inference that he committed that crime. Voluntary confessions are deemed to be relevant facts as against the persons who make them only.

No confession is deemed to be voluntary if it appears to the judge to have been caused by any inducement, threat or promise proceeding from a person in authority, and having reference to the charge against the accused person, whether addressed to him directly, or brought

to his knowledge indirectly; and if (in the opinion of the judge) such inducement, threat or promise gave the accused person reasonable grounds for supposing that, by making a confession, he would gain some advantage, or avoid some evil in reference to the proceedings against him. A confession is not involuntary only because it appears to have been caused by the exhortation of a person in authority to make it as a matter of religious duty, or by an inducement collateral to the proceeding, or by inducements held out by a person not in authority.

The prosecutor, officers of justice having the prisoner in custody, magistrates and other persons in similar positions are persons in authority. The master of a prisoner is not as such a person in authority, if the crime of which the person making the confession is accused, was not committed against him. A confession is deemed to be voluntary if (in the opinion of the judge) it is shown to have been made after the complete removal of the impression produced by any inducement, threat or promise, which would otherwise render it involuntary.

Facts discovered in consequence of confessions improperly obtained, and so much of such confessions as distinctly relate to such facts, may be proved.

Q.—May a confession obtained under a promise of secrecy be used in evidence?

A.—Yes, if a confession is otherwise relevant it does not become irrelevant merely because it was made under a promise of secrecy, or in consequence of a deception practised on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions which he need not

have answered, whatever may have been the form of those questions, or because he was not warned that he was not bound to make such confession and that evidence of it might be given against him.

Q.—When may dying declarations as to cause of death be used ?

A.—A declaration made by the declarant as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, is deemed to be relevant only in trials for the *murder or manslaughter* of the declarant, and only when the declarant is shown, to the satisfaction of the judge, to have been in actual danger of death, and to have given up all hope of recovery at the time when his declaration was made.

Such a declaration is not irrelevant merely because it was intended to be made as a deposition before a magistrate, but is irregular.

Thus *A.* is accused of murdering *B.* ; *B.* having no hopes of recovery, though his doctor has, declares *A.* murdered him and dies ten days afterwards, this is relevant ; on the other hand, where the declarant states that he makes the declaration “with no hope *at present* of recovery,” and dies shortly afterwards, the statement is irrelevant. (*R. v. Jenkins*, L. R., 1 C. C. R. 187.)

Q.—On what conditions may evidence given at a former trial be used in subsequent proceedings ?

A.—Evidence given by a witness in a previous action is relevant for the purpose of proving the matter stated in a subsequent proceeding, or in a later stage of the same proceeding when the witness is dead, or is mad, or so ill that he will probably never

be able to travel, or is kept out of the way by the adverse party.

Provided in all cases—

(1.) That the person against whom the evidence is to be given had the right and opportunity to cross-examine the declarant when he was examined as a witness.

(2.) That the questions in issue were substantially the same in the first as in the second proceeding.

(3.) That the same person is accused upon the same facts.

Q.—In what cases may opinions constitute evidence?

A.—When there is a question as to any point of science or art, the opinions upon that point of persons specially skilled in any such matter are deemed to be relevant facts.

Thus, the question is whether the death of A. was caused by poison.

The opinions of experts as to the symptoms produced by the poison, by which A. is supposed to have died, are deemed to be relevant.

Again, on A. being charged with a crime, the question of insanity is raised: evidence may be given by experts whether the symptoms commonly show insanity, and whether complete or partial.

Q.—When may evidence as to character be given?

A.—In criminal proceedings, the fact that the person accused has a good character, is deemed to be relevant; but the fact that he has a bad character is deemed to be irrelevant, unless it is itself a fact in issue, or unless evidence has been given that he has a

good character, in which case evidence that he has a bad character is admissible.

When any person gives evidence of his good character who, being on his trial for any felony, not punishable with death, has been previously convicted of felony :

Or, who being upon his trial for any offence punishable under the Larceny Act, 1861, has been previously convicted of any felony, misdemeanor or offence punishable upon summary conviction :

Or, who being upon his trial for any offence against the Coinage Act, 1861, or any former act relating to the coin, has been previously convicted of any offence against any such act :

The prosecutor may, in answer to such evidence of good character, give evidence of any such previous conviction *before the jury return their verdict* for the offence for which the offender is being tried.

Q.—In what manner must proof of the contents of documents be given ?

A.—By primary or secondary evidence.

Q.—What is primary evidence of the contents of a document ?

A.—Primary evidence means the document itself produced for the inspection of the court, accompanied by the production of an attesting witness in cases in which an attesting witness is necessary to its validity, or an admission of its contents proved to have been made by a person whose admissions are relevant.

Where a document is executed in several parts, each part is primary evidence of the document.

Where a document is executed in counterpart, each

counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it.

Where a number of documents are all made by printing, lithography or photography, or any other process of such a nature as in itself to secure uniformity in the copies, each is primary evidence of the contents of the rest; but where they are all copies of a common original, no one of them is primary evidence of the contents of the original.

Q.—How is a document which requires attestation to be proved?

A.—If a document is required by law to be attested, it may not be used as evidence (except in the cases hereinafter mentioned, in which secondary evidence of its contents may be given) if there be an attesting witness alive, sane and subject to the process of the court, until one attesting witness at least has been called for the purpose of proving its execution.

If it be shown that no such attesting witness is alive, or can be found, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person.

Q.—What is meant by secondary evidence?

A.—Any evidence falling short of primary evidence; the following may be given as instances:— (1.) Examined copies, exemplifications, office copies, and certified copies. (2.) Other copies made from the original, and proved to be correct. (3.) Counterparts of documents as against the parties who did not

execute them. (4.) Oral accounts of the contents of a document given by some person who has himself seen it.

Q.—When may secondary evidence of documents be given?

A.—When the original is shown or appears to be in the possession or power of the adverse party, and when after due notice he does not produce it:

When the original is shown, or appears to be in the possession or power of a stranger not legally bound to produce it, and who refuses to produce it after being served with a *subpoena duces tecum*, or after having been sworn as a witness, and asked for the document, and having admitted that it is in court:

When the original has been destroyed or lost, and proper search has been made for it:

When the original is of such a nature as not to be easily movable, or is in a country from which it is not permitted to be removed:

When the original is a public document:

When the document is an entry in a banker's book: (But in this case the copies cannot be received as evidence, unless it be first proved that the book in which the entries copied were made was at the time of making one of the ordinary books of the bank, and that the entry was made in the usual and ordinary course of business, and that the book is in the custody and control of the bank, which proof may be given orally, or by affidavit by a partner or officer of the bank, and that the copy has been examined with the original entry, and is correct, which proof must be given by some person who has examined the copy

with the original entry, and may be given orally or by affidavit.) (See 42 Vict. c. 11.)

When the original is a document for the proof of which special provision is made by any Act of Parliament or any law in force for the time being: or

When the originals consist of numerous documents which cannot conveniently be examined in court, and the fact to be proved is the general result of the whole collection, provided that that result is capable of being ascertained by calculation.

Q.—What is hearsay evidence and when may it be used?

A.—Hearsay evidence is that which is learnt from some one else, whether by word of mouth or otherwise, and is therefore not upon oath; it may be given:—

- (1) To prove a death beyond seas;
- (2) To prove a prescription, custom, pedigree, reputation on questions of public right;
- (3) To prove that a witness has at some prior date contradicted or confirmed his testimony in court;
- (4) When made as a dying declaration;
- (5) When made by deceased persons against their interest, or in the usual course of business;
- (6) When feelings are material to be proved, *e. g.*, statements made to a surgeon after an assault;
- (7) When it is part of the *res gestæ*.

(See Har. Crim. Law, p. 430.)

Q.—How may public documents be proved?

A.—(1) By production of the document itself.

(2) By examined copies. An examined copy is a copy proved by oral evidence to have been examined

with the original, and to correspond therewith. The examination may be made either by one person reading both the original and the copy, or by two persons, one reading the original, and the other the copy; and it is not necessary (except in peerage cases) that each should alternately read both.

(3) By exemplifications. An exemplification is a copy of a record set out either under the great seal or under the seal of a court.

(4) By certified copies.

(5) By Queen's printers' copies.

(See 45 & 46 Vict. c. 9, making copies of documents printed by her Majesty's Stationery Office good evidence.)

Q.—When are documents said to prove themselves?

A.—Where any document purporting or proved to be thirty years old is produced from any custody which the judge in the particular case considers proper, it is presumed that the signature and every other part of such document which purports to be in the handwriting of any particular person, is in that person's handwriting, and in case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested; and the attestation or execution need not be proved, even if the attesting witness is alive and in court.

Documents are said to be in proper custody if they are in the place in which, and under the care of the person with whom they would naturally be; but no custody is improper, if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable.

H.

P

Q.—On whom does the general burden of proof lie ? and illustrate your answer.

A.—The burden of proof in any proceeding lies at first on that party against whom the judgment of the court would be given if no evidence at all were produced on either side, regard being had to any presumption which may appear upon the pleadings. As the proceeding goes on, the burden of proof may be shifted from the party on whom it rested at first by his proving facts which raise a presumption in his favour.

Thus, A., a married woman, is accused of theft, and pleads not guilty. The burden of proof is on the prosecution. She is shown to have been in possession of the stolen goods soon after the theft. The burden of proof is shifted to A. She shows that she stole them in the presence of her husband. The burden of proving she was not coerced by him is shifted on to the prosecution.

Again, A. is charged with bigamy: the prosecution prove the first marriage, A. proves that at that time he was a minor: the burden of proving the consent of A.'s parents is thrown on the prosecution. (1 Russ. Cri. p. 33.)

Q.—When does a presumption of death arise from absence ?

A.—A person shown not to have been heard of for seven years by those (if any) who, if he had been alive, would naturally have heard of him, is presumed to be dead, unless the circumstances of the case are such as to account for his not being heard of without assuming his death, but there is no presumption as to

the time when he died, and the burden of proving his death at any particular time is upon the person who asserts it. There is no presumption as to the age at which a person died who is shown to have been alive at a given time, or as to the order in which two or more persons died who are shown to have died in the same accident, shipwreck or battle.

Q.—In what cases are witnesses incompetent?

A.—A witness is incompetent if, in the opinion of the judge, he is prevented by extreme youth, disease affecting his mind, or any other cause of the same kind, from recollecting the matter on which he is to testify, from understanding the questions put to him, from giving rational answers to those questions, or from knowing that he ought to speak the truth.

A witness unable to speak or hear is not incompetent, but may give his evidence by writing or by signs, or in any other manner in which he can make it intelligible; but such writing must be written, and such signs made, in open court. Evidence so given is deemed to be oral evidence.

Q.—What is the general rule as to the competency of husband or wife as witness for or against the other?

A.—In criminal cases the accused person, and his or her wife or husband, and every person, and the wife or husband of every person, jointly indicted with him, is incompetent to testify. (*R. v. Payne*, L. R., 1 C. C. R. 349.)

Q.—State any exception you know to the rule.

A.—In any criminal proceeding against a husband or wife for any bodily injury or violence inflicted

upon his or her wife or husband, each wife or husband is competent and compellable to testify.

And husband or wife may give evidence for or against the other in trials of indictments for the non-repair of public highways or bridges, or for nuisances to any public highway, river or bridge: or in proceedings instituted for the purpose of trying civil rights only (see 40 & 41 Vict. c. 14): or in proceedings on the revenue side of the Exchequer Division of the High Court of Justice (see 28 & 29 Vict. c. 104): or in proceedings under the Explosive Substances Act, 1883 (46 Vict. c. 3, s. 4): or in proceedings for sending an unseaworthy ship to sea (38 & 39 Vict. c. 88, s. 4): or in proceedings for receiving arms from a soldier (42 & 43 Vict. c. 33, s. 149).

And under the Married Women's Property Acts, 1882 and 1884, in criminal proceedings by one against the other, husband and wife are competent and admissible witnesses, and, except when defendant, compellable witnesses. (47 & 48 Vict. c. 14.)

This latter act was passed in consequence of the decision in *Reg. v. Brittleton* (50 L. T. 276), which decided that the husband's evidence was not admissible against the wife.

Q.—Is a witness compelled to criminate himself?

A.—No one is bound to answer any question if the answer thereto would, in the opinion of the judge, have a tendency to expose the witness (or the wife or husband of the witness) to any criminal charge or to any penalty or forfeiture which the judge regards as reasonably likely to be preferred or sued for, but no one is excused from answering any question only

because the answer may establish or tend to establish that he owes a debt or is otherwise liable to any civil suit, either at the instance of the Crown or of any other person.

A bankrupt on examination is bound to answer any questions that may be asked him, whether they criminate him or not, for he is under a personal obligation to make the fullest disclosure as to his property. (*Ex parte Schofield, re Firth*, L. R., 6 Ch. D. 230.)

Q.—In what cases is a person not criminally responsible for admissions made as a witness?

A.—Under the 24 & 25 Vict. c. 96, a director, factor, solicitor, trustee, or other agent giving evidence in a civil action is not liable for misdemeanors by reason of statements made therein criminating him. (Sect. 75.)

A similar law prevails with respect to persons charged with stealing or fraudulently destroying or concealing any title deed or wills. (Sects. 28 and 29.)

A somewhat similar clause is contained in the Poisoned Grain Prohibition Act, 1863 (26 & 27 Vict. c. 113, s. 5); also under the Exhibition Medals Act, 1863 (26 & 27 Vict. c. 119, s. 5); also under the Gaming Act (8 & 9 Vict. c. 109); also if any person giving evidence under the Corrupt Practices Act, 1883 (46 & 47 Vict. c. 51), obtains a certificate of indemnity, he will not be criminally responsible (sect. 59); and also if he obtain a like certificate under the Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70, s. 30).

Q.—To what matters must cross-examination and re-examination be directed?

A.—The examination and cross-examination must

relate to facts in issue or relevant, or deemed to be relevant, thereto ; but the cross-examination need not be confined to the facts to which the witness testified on his examination in chief. The re-examination must be directed to the explanation of matters referred to in cross-examination, and if new matter is, by permission of the court, introduced in re-examination, the adverse party may further cross-examine upon that matter.

Q.—When may leading questions be asked ?

A.—Questions suggesting the answer which the person putting the question wishes or expects to receive, or suggesting disputed facts as to which the witness is to testify, must not, if objected to by the adverse party, be asked in an examination in chief or a re-examination, except with the permission of the court, but such questions may be asked in cross-examination.

Q.—In cases of rape, may evidence be given as to the character of the prosecutor ?

A.—Yes ; and it may be shown that the woman, against whom the offence was committed, was of a generally immoral character, though she is not cross-examined on the subject. The woman may, in such a case, be asked whether she has had connection with other men, but her answer cannot be contradicted. She may also be asked whether she has had connection on other occasions with the prisoner, and if she denies it she (probably) may be contradicted. (See *R. v. Holmes*, 6 C. & P. 337.)

Q.—When may depositions taken before magistrates be used at the trial ?

A.—When it is proved (to the satisfaction of the

judge) that the witness is dead, or so ill as not to be able to travel (although there may be a prospect of his recovery), or if he is kept out of the way by the person accused, or (probably) if he is too mad to testify, and if the deposition purports to be signed by the justice by or before whom it purports to have been taken, and if it is proved by the person who offers it as evidence that it was taken in the presence of the person accused, and that he, his counsel or attorney had a full opportunity of cross-examining the witness.

Unless it is proved that the deposition was not in fact signed by the justice by whom it purports to be signed (or that the statement was not taken upon oath), or (perhaps) that it was not read over to or signed by the witness.

If there is a prospect of the recovery of a witness proved to be too ill to travel, the judge is not obliged to receive the deposition but may postpone the trial.

Q.—Under what conditions may depositions taken to perpetuate testimony be afterwards used?

A.—If the deponent is proved to be dead, or if it is proved that there is no reasonable probability that the deponent will ever be able to travel or to give evidence, and if the deposition purports to be signed by the justice by or before whom it purports to be so taken, and if it is proved to the satisfaction of the court that reasonable notice of the intention to take such deposition was served upon the person (whether prosecutor or accused) against whom it is proposed to be read, and that such person, or his counsel or attorney had, or might have had if he had chosen to have been present, full opportunity of cross-examining the deponent.

Q.—How is the attendance of witnesses secured?

A.—In felonies and misdemeanors the witnesses are, upon the preliminary inquiry, bound over by recognizance to appear and give evidence at the trial, in default the recognizance is estreated and the penalty levied. If not bound over they may be compelled to attend by subpoena and are liable to attachment for default.

If the witness is in criminal custody a Secretary of State or a judge may, on application by affidavit, issue a warrant to bring up the prisoner to give evidence. If in civil custody a writ of *habeas corpus ad testificandum* may be obtained by a motion in court or application at chambers to a judge founded on an affidavit stating that the witness is a material one.



Verdict and Judgment.

Q.—Into what classes may verdicts be divided?

A.—Into general, *i.e.*, “guilty” or “not guilty,” on the whole charge:

Partial, as when the jury convict on one or more counts of the indictment and acquit on the rest:

Special, when the facts of the case as found by the jury are set forth, but the court is desired to draw the legal inference from the facts, for example, whether they amount to murder or manslaughter. (Har. Crim. Law, p. 442.)

Q.—Give instances of cases in which a person being charged with certain offences may be punished, though found guilty of others.

A.—A person charged with a felony or misdemeanor

may be found guilty of an *attempt* to commit the same offence, and the same punishment may be inflicted as if he had been in the first instance charged with the attempt only. (14 & 15 Vict. c. 100, s. 9.)

Upon an indictment for a misdemeanor, if the facts given in evidence amount to a felony, the prisoner is not on that account to be acquitted of the misdemeanor, unless the court thinks fit to discharge the jury and to order the defendant to be indicted for the felony. (14 & 15 Vict. c. 100, s. 12.)

The prisoner may, upon an indictment for *robbery*, be found guilty of an *assault with intent* to rob. (24 & 25 Vict. c. 96, s. 41.)

Upon an indictment for larceny, the prisoner may be found guilty of *embezzlement* and *vice versa*. (24 & 25 Vict. c. 96, s. 72.)

Upon an indictment for obtaining by *false pretences*, if the offence is shown by the evidence to amount to *larceny*, the defendant may still be convicted of false pretences. (24 & 25 Vict. c. 96.)

And whenever a person is indicted for an offence which includes in it an offence of minor extent and gravity of the same class, the prisoner may be convicted of such minor offence. Thus, on an indictment for murder, he may be convicted of manslaughter, so of simple larceny, if indicted for stealing in a dwelling-house, or any other aggravated form of larceny. (Har. Crim. Law, p. 443.)

Q.—When and by whom is judgment pronounced?

A.—When, upon a charge of felony, the jury have, in the presence of the prisoner, brought in their verdict “guilty,” he is either immediately, or at a

convenient time soon after, asked by the court if he has anything to offer why judgment should not be awarded against him. Judgment is then pronounced by the court, and the judge adds such remarks as he thinks proper. And, upon a charge of misdemeanor, in case the defendant be found guilty in his absence (as he may be), a *capias* is thereupon issued to bring him in to receive his judgment; and if he absconds, he may be prosecuted even to outlawry; but no corporal punishment can in any case be awarded against a defendant unless he be personally present.

Q.—By what acts was penal *sérvitude* substituted for transportation?

A.—By 16 & 17 Vict. c. 99, and 20 & 21 Vict. c. 3. And it was provided by the latter of such acts that no person should for the future be sentenced to transportation; but that, instead thereof, any persons who, if those acts had not passed, might have been so sentenced, shall be liable to be sentenced to be kept in *penal servitude* for a term of the same duration; and, further, that any person who might have been sentenced *either* to transportation or imprisonment, may be sentenced either to penal servitude or to imprisonment.

Q.—By whom, and on what conditions, may tickets of leave be issued?

A.—It is by the 16 & 17 Vict. c. 99, and the 20 & 21 Vict. c. 3, made lawful for her Majesty by order in writing under the hand and seal of the Secretary of State to grant to any convict, sentenced either to be kept in penal servitude or to be imprisoned, a *licence to be at large* in the United Kingdom and the Channel

Islands (or in such part thereof respectively as shall be expressed in the licence) during such portion of his term, and on such conditions in all respects as to her Majesty shall seem fit. But such licence may be revoked or altered at pleasure, and will be forfeited if the holder shall be subsequently convicted of any indictable offence, or if he shall fail to report himself to the proper officer once in every month, or to give due notice of any change of residence; and if it be so revoked or forfeited, the convict may be sent back to the prison from which he was released by virtue of his licence, or to be placed in any other prison wherein convicts under sentence of penal servitude may be lawfully confined.

Q.—When may police supervision be added to a punishment?

A.—It is enacted by the Prevention of Crimes Act, 1871 (34 & 35 Vict. c. 112), that where any person is convicted on indictment of a crime, and a previous conviction of a crime is proved against him, the court may, in addition to any other punishment, direct that he is to be subject to the *supervision of the police* for a period not exceeding seven years, commencing immediately after the expiration of the sentence passed on him for the last of such crimes; and that any person so subject to such supervision who shall remain in any place for forty-eight hours without notifying the place of his residence to the chief officer of police for the district, or who shall fail to comply with the requisitions of the act in periodically reporting himself to such chief officer, shall, unless he can show that he did his best to act in conformity to the law, be liable

to be imprisoned, with or without hard labour, for any period not exceeding one year.

Q.—What are now the consequences upon the property of the prisoner of a conviction for felony?

A.—By the 33 & 34 Vict. c. 23, it is provided that a conviction for treason or felony, followed by a sentence of death or penal servitude, or any term of imprisonment with hard labour exceeding twelve months, shall disqualify the person convicted from holding or retaining any military, naval or civil office under the Crown, or other public employment, or any ecclesiastical benefice, or any place, office or emolument in any university or other corporation, or to retain any pension or superannuation allowance, unless he shall receive a free pardon from Her Majesty within two months after conviction; and the same statute further provides that the property of the convict may be committed to the custody and management of *administrators* to be appointed by the Crown, or (in default of such appointment) to the management of *interim curators*, who may be appointed by the justices of the peace on an application made in the interest of the convict or his family, and that such administrators or curators are to pay his debts and liabilities and support his family, and shall preserve the residue of his property for the convict himself or his representatives on the completion of his punishment, his pardon or his death. It is, however, to be noted that the above act expressly excludes from its operation the law of forfeiture consequent upon *outlawry*, and, therefore, the previous consequences of a judgment of outlawry on a charge of felony are still in force.

Q.—What power has the court of ordering the restitution of stolen property?

A.—It is, by the 24 & 25 Vict. c. 96, enacted that if any person guilty of any felony or misdemeanor mentioned therein in stealing, taking, obtaining, extorting, embezzling, converting or disposing of, or in knowingly receiving any chattel, money or other security or property, shall be indicted for such offence by the owner or his executor or administrator and convicted thereof, in such case the property shall be restored to the owner or his representative, and the court shall have power from time to time to award writs of restitution for such property or to order the restitution in a summary manner; provided in cases of valuable securities that if it shall appear before any award or order made that the same shall have been *bonâ fide* paid or discharged by any person liable to the payment thereof, or, being a negotiable instrument, shall have been *bonâ fide* taken or received by transfer or delivery by some person or body corporate for a valuable consideration without notice or without reasonable cause to suspect that the same had by any felony been stolen, no restitution will be ordered, &c. Further, it must be noted that restitution after conviction reaches to the goods stolen even after their sale in market overt; and again, without any order for restitution, the owner may peaceably retake his goods wherever found unless a new property has been fairly acquired therein.

Q.—In what way may a *bonâ fide* purchaser of stolen goods be indemnified?

A.—By the 30 & 31 Vict. c. 35, s. 9, it is enacted

that where the prisoner has been convicted of any offence which includes the stealing of any property, and it shall appear to the court that the prisoner has sold such property to one who had no knowledge that the same was stolen, it shall be lawful for the court, on the application of such purchaser, and on the restitution of the stolen property to the prosecutor, to order a sum not exceeding the proceeds of the sale to be delivered to the purchaser out of any monies which may have been taken from the prisoner on his apprehension. Moreover, by the 33 & 34 Vict. c. 23, ss. 3, 4, the court is now enabled to condemn an offender who has been convicted of treason or felony to pay the costs of the suit, and also on application of any person aggrieved, a sum of money by way of compensation, not exceeding 100%.

Q.—What punishments are by law prescribed?

A.—Death, penal servitude, imprisonment, fine. Incidental to the imprisonment are sometimes hard labour, whipping, solitary confinement, and police supervision.

To enter into recognizances to come up for judgment if called for.

To find sureties to keep the peace.

Youthful offenders under certain circumstances may be sent to reformatories or industrial schools.

Q.—Can cumulative punishment be given?

A.—Yes; if the prisoner be found guilty on several counts in an indictment he may be sentenced to several terms of imprisonment, to run concurrently, or the second term to commence on the expiration of the first. (*Reg. v. Castro*, 5 Q. B. D. 490.)

Reversal of Judgment.

Q.—When may a new trial be granted ?

A.—Where an indictment has been preferred in the Queen's Bench, or has been removed into that court by *certiorari*, a new trial may, after *conviction*, be moved for on the ground that the prosecutor has omitted to give due notice of trial, or that the verdict has been contrary to evidence or to the direction of the judge, or for the improper reception or rejection of evidence, or other mistake or misdirection of the judge, or for any gross misbehaviour of the jury among themselves, or for surprise, or for any other cause where it shall appear to the court that a new trial will further the ends of justice. (Arch. p. 194.)

It is now settled that only in misdemeanors, and not in felonies, can a new trial be granted.

Q.—In what ways may a judgment be set aside ?

A.—Either by falsifying or reversing the judgment, or else by reprieve or pardon.

Q.—What is a writ of error ?

A.—A writ of error is a writ directed to an inferior court which has given judgment against the defendant, requiring it to send up the record and proceedings of the indictment in question to the Queen's Bench Division for that court to examine whether the errors alleged took place, and to affirm or reverse the judgment of the inferior court. It must be grounded on some substantial defect apparent on the face of the record, as if the indictment be bad in substance or the sentence is illegal. It will never be allowed for a formal defect. The following are examples of cases in

which it has been held a writ of error would lie:—in perjury, where the court has not competent authority to administer the oath; in libel, if the words do not appear to be libellous; in false pretences, if it is not shown what the false pretences were. (*Castro v. Murray*, 32 L. T. 675; Har. Crim. Law, p. 469.)

Q.—State shortly the proceedings upon a writ of error.

A.—Before suing out the writ of error it is necessary to obtain the fiat of the attorney-general on showing reasonable ground of error. This is at the discretion of the attorney-general, but is not generally refused; indeed, in misdemeanors, it is granted as a matter of course. The writ is delivered to the clerk of the peace or other officer of the court to which it is directed, who has the custody of the indictment. He makes up the record and makes out the return to the court. The party suing assigns his errors. The Crown joins in error. The case is argued, and judgment of affirmance or reversal given. The court of error may either pronounce the proper judgment itself, or remit the record back to the inferior court in order that the latter may pronounce judgment. If judgment is affirmed the defendant may be at once committed to prison, and if he does not surrender within four days a judge may issue a warrant for his apprehension. If judgment is reversed, all the former proceedings are null and void, and the defendant is in the same position as if he had never been charged with the offence; therefore he may be indicted again on the same ground.

In the interval before the result of the proceedings in error is known, in cases of misdemeanor the

defendant is discharged from custody on entering into the recognizance with sureties required by the acts mentioned below; in felonies, he remains in custody. (Har. Crim. Law, p. 469.)

Q.—What are the functions of the Court for Crown Cases Reserved, and how is it constituted?

A.—If any question of law arises at a trial for treason, felony or misdemeanor, which the court (whether a judge at the assizes, the justices or recorder at the quarter sessions) deems its inexpedient or impracticable to decide at once and of itself, it reserves the point for the consideration of the Court for Crown Cases Reserved: provided, of course, a conviction takes place, for otherwise there would be no need for further consideration. Such court consists of the judges of the High Court of Justice, or five of them at least, of whom the Lord Chief Justice of England must be one. The court reserving the point may respite execution of the judgment on such conviction, or postpone the judgment until the question is decided; and in either case, to secure the appearance of the defendant when he is required, the court will in its discretion either commit him to prison or take a recognizance of bail with one or two sureties. (Har. Crim. Law, p. 471.)



Reprieve.

Q.—What is a reprieve?

A.—A reprieve (*repandre*) is the withdrawing of a sentence for an interval of time, whereby the execution of a criminal is suspended. (4 Blk. p. 394.)

Q.—By whom and on what grounds may reprieves be granted?

A.—This may be in the first place *ex mandato regis*, that is, the mere pleasure of the Crown expressed to the court by which execution is to be awarded. Again, there may be a reprieve *ex arbitrio judicis*, either before or after judgment; as where the judge is not satisfied with the verdict, or the evidence is suspicious, or the indictment is insufficient, or sometimes, if any favourable circumstances appear in the criminal's character, in order to give room to apply to the Crown for either an absolute or conditional pardon. These arbitrary reprieves may be granted or taken off by the justices of gaol delivery, although their session be finished and their commission expired, but this rather by common usage than of strict right.

Reprieves may also be *ex necessitate legis*, as where a woman is capitally convicted and pleads her pregnancy, though this is no cause to stay the judgment, yet it is to respite the execution till she be delivered. In case this plea be made in stay of execution, the judge must direct a jury of twelve matrons or discreet women to inquire the fact, and if they bring in their verdict *quick with child* (for barely *with child*, unless it be alive in the womb, is not sufficient), execution shall be stayed generally till the next session, and so from

session to session, till either she is delivered, or proves by the course of nature not to have been with child at all. Another cause of regular reprieve is, if the offender became *non compos* between the judgment and the award of execution. (4 Steph. Comm. p. 471.)

Q.—What provisions are, by a recent statute, made for detention of a criminal lunatic?

A.—By the Criminal Lunatics Act, 1884, 47 & 48 Vict. c. 64, it is provided: Where it appears to any two members of a visiting committee of a prison that a prisoner therein, not under sentence of death, is insane, they shall call to their assistance two legally qualified medical practitioners, and such members and practitioners shall examine the prisoner, and may certify in writing that he is insane. In the case of a prisoner under sentence of death, if it appears to a Secretary of State by any means that there is reason to believe a prisoner to be insane, he shall appoint two such practitioners to examine the prisoner, and they may in writing certify that he is insane; thereupon a Secretary of State may by warrant direct such prisoner to be removed to an asylum named therein until he ceases to be a criminal lunatic. (Sect. 2.)

An annual report as to the state of such lunatic is to be made by the superintendent of the asylum. (Sect. 4.)

The prisoner may be remitted to prison on his becoming sane (sect. 3); and provision is to be made for the safe keeping of an insane prisoner at the end of his sentence. (Sects. 6 & 7).

Q.—By whom may a pardon be granted?

A.—By the sovereign alone.

Q.—For what offences can no pardon be granted?

A.—The sovereign may pardon all offences merely against the Crown or the public, excepting (1) that, to preserve the liberty of the subject, the committing any man to prison out of the realm is by the Habeas Corpus Act, 31 Car. II. c. 2, made a *præmunire* unpardonable even by the king; nor (2) can a king pardon where private justice is principally concerned in the prosecution of offenders, "*non potest rex gratiam facere cum injuriâ et damno aliorum.*" For example, he cannot pardon a common nuisance while it remains unredressed or so as to prevent an abatement of it, though afterwards he may remit the fine; and this, because though the prosecution is vested in the king to avoid multiplicity of suits, yet during its continuance this offence savours more of the nature of a *private* injury to each individual in the neighbourhood than of a *public* wrong.

Q.—In what form must a pardon be?

A.—It must be by warrant under the great seal, or under the sign manual.

Execution.

Q.—By whom and in what manner must an execution be carried out?

A.—Execution is carried out by the sheriff or his deputy, thus giving effect to the sentence of the judge. It is the usage for the judge at the end of the assizes to sign the calendar containing the prisoners' names and sentences. This is left to the sheriff as his

warrant and authority, and, if he receive no special order to the contrary, he executes the judgment therein contained. The criminal is usually executed about a fortnight or three weeks after his sentence. An execution for murder must take place within the walls of the prison in which the offender is confined at the time. If the execution be not done by the proper officer, or is not carried out in strict conformity with the sentence, as if the criminal is beheaded, instead of hanged, the official is guilty of murder. If the criminal survives he must be hanged again, inasmuch as the sentence is that he be hanged by the neck till he is dead.

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